

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1944

# No. 574

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY, APPELLANTS,

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, ET AL.

# No. 592

FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, APPELLANT,

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND THE ALABAMA GREAT SOUTHERN RAIL-ROAD COMPANY, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

## VOL. II

#### INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 6, 1945.

## INDEX

Record from D. C. U. S., Western District of Kentucky-Co	n- Original	Print
Complaint of Economic Stabilization Director (omitted in		
printing)	425	
Order granting intervention (omitted in printing).	463	
Answer of United States of America.	464	420
Answer of Interstate Commerce Commission	466	421
Answer of intervening rail lines.	475	428
Motion of rail lines for leave to intervene	478	429
Order granting intervention.	481	431
Motion of intervening rail lines to dismiss complaint of Fred		. 7
M. Vinson	483	431
Proceedings before Interstate Commerce Commission in		
Docket No. 29037	591	433
Petition/of Railroads Operating in the State of Ten-		
nessee	591	433
Answer of Railroad and Public Utilities Commission of		
the State of Tennessee.	608	444
Order of the Commission instituting investigation	616	448
Transcript of the stenographer's notes of the hearing		
held December 2 and 3, 1943, at Nashville, Tennessee,		
and exhibits filed at said hearing (omitted in printing)	618	3
Report of the Commission (omitted in printing)	1050	
Petition of the Railroad and Public Utilities Commission		1 100
of the State of Tennessee for reconsideration	1076	450
Petition of the Price Administrator for reconsideration.	1105	466
Motion for Entry of Order	1154	503
Order of the Commission denying petitions for recon-	. %	
sideration	1158	504
Order of the Commission entered May 8, 1944	1159	504
Corrected order of the Commission entered May 8,		
1944 (omitted in printing)	1161	
CIVIL ACTION NO. 706		
-Petition	1164	506
Exhibit "A"-Report of Commission (omitted in print-	a	
ing)	1178	
Exhibit "B"-Excerpts from proposed report of Ex-	*	
aminer	1215	513
Exhibit "C"-Petition for reconsideration	1220	518
Exhibit "D"-Order denying petitions for reconsider-		
ation (omitted in printing)	1239	
Exhibit "E"-Order of Commission, May 8, 1944	1241	529
Exhibit "F"-Corrected order of Commission, May 8,	× *,	
1944 (omitted in printing)	1244	
Summons and return (omitted in printing)	1247	
Order convening three judge Court	1249	531
Motion of Economic Stabilization Director for leave to in-		
tervene (omitted in printing)	1253	
Complaint of Economic Stabilization Director (omitted in		
printing)	1255	1
Order granting intervention (omitted in printing).	1293	

Record from D. C. U. S., Western District of Kentucky-Co	n-	
	Original	Print
Answer of United States of America	1294	532
Answer of Interstate Commerce Commission	1296	533
Answer of intervening rail lines.	1305	540
Motion of rail lines for leave to intervene	1308	541
Order granting intervention	1311	542
Order on motion to dismiss complaint of Fred M. Vinson.	1313	543
Order of submission	1314	544
Motion of intervening rail lines to dismiss complaint of Fred		
M. Vinson	1316	545
Proceedings before Interstate Commerce Commission in		. 030
Docket No. 28963	1360	546
Transcript of hearing	1361	547
Caption and appearances	1361	547
Testimony of E. N. Aiken	1369	551
T. J. Stewart	: 1468	614
J. D. Makinson	1491 -	
T. K. Lynch	1509	629
J. A. Higgins	0	640
P. E. Geil	1535	658
W. W. Simpson	1547	666
	1570	680
J. S. Tassin	1609	706
J. L. Sharpe	1656	. 736
J. S. Tassin (recalled)	1658	737
W. F. Kennedy	1678	. 750
W. W. Waldrop	1687	755
C. H. Ohme	1700	763
G. W. Tobias	1717	774
J. G. Bruce.	1724	778
Norwood Johnson	1744	789
Jacob Mohr	1782	813
J. G. Bruce (recalled)	1797	823
Exhibits:		
No. 1—Railroad map of Southeastern United		
States (omitted in printing)	1838	
No. 2—Examples of possible reductions of in-		
terstate fares, etc	1839	848
No. 3—Examples showing fares paid for trans-		
portation in coaches by interstate and intra-		
state passengers	1843	851
No. 4—Report and order of Alabama Public		
Service Commission in Docket No. 8618	1844	851
Nos. 5 to 7—Examples of present interstate	1	
and intrastate fares	1849	856
No. 8-Statement showing manner in which	I -	
the lower basis of fares in coaches intrastate		
in Alabama makes it possible for passengers		
to defeat through published interstate fares,		
etc	1852	858
No. 9—Same	1855	859
No. 10—Same	1856	860

Pro

occeedings before Interstate Commerce Commission in		
Docket No. 28963—Continued		154
	riginal	Print '
No. 11-Same	1857	860
No. 12—Same	1858	861
No. 13—Same	1859	· 862
No. 14—Same	1860	863
No. 15—Statement of present basic passenger		
fares between points on G. M. & O. R.R.		
(in cents per mile)	1861	864
No. 16—Examples of advantage, preference	7	
and prejudice as between persons in intra-		
state and interstate commerce in Alabama:	1862	864-
No. 17.—Findings and data in support thereof.	1863	865
No. 18—Transcript of hearing before Alabama		
Public Service Commission in Docket No.		
- a 8618.	1888	886
Caption and appearances	1889 .	886
. Testimony of E. E. Barry	1894	888
W. W. Simpson	1938	915
J. L. Beight	1961	929
James S, Earley	2016	963
No. 19—Order of I. C. C. in ex parte No. 148,	2010	, ado
	2010	ø 982
Aug. 1, 1942	2048	9 904
No. 20—Reply of respondents to petition of		004
Leon Henderson before I. C. C.	2050	984
No. 21—Operating statistics.	2058	992
No. 22—Selected passenger revenue and traffic	0000	3
statistics	2069	1001
No. 23—Financial statements	2074	1004
No. 24—Statements showing passenger rev-	-	
enue, 1937-1941	2079	1008
No. 25—Charts showing production of durable	0000	
goods, etc	2083	1012
No. 26—Statement reproducing excerpts from	1	2
decisions of U.S. Supreme Court and I.C.C.	2	
(omitted in printing)	2092	0
No. 27—Statement showing total railway oper-		3 6
ating revenues earned in Alabama by peti-		1
tioners, 1939–1942	2096	1021
No. 28 Statement showing passenger oper-		
ating revenues, etc., earned in Alabama by		
petitioners, 1939-1942	2097	. 1022
No. 29—Same	2098	. 1023
No. 30—Same showing freight revenues	2099	1024
No. 31—Comparison of present rail coach fares		
and bus fares with proposed fares	2100	1025
No. 32—Statement showing scheduled and re-	-	
stricted stops of various first class passenger		
trains	2102	1027
No. 33-Statement showing Alabama oper-		
ating revenues and expenses, etc., 1941-1942	2104	1029

Record from D. C. U. S., Western District of Kentucky—Continued	n-	
· Proceedings before Interstate Commerce Commission in		
Docket No. 28963—Continued		
Exhibits—Continued	Original	Print
No. 34-Same, 1942-1943, Southern District.	. 2117	1036
No. 35-Same, 1941-1942, Southern Region	2118	1030
No. 36-Statement showing railway revenues		-
and expenses-Railways of class I in the		
United States	2119	1036
No. 37—Same	2122	1038
No. 38—Same	2124	1040
No. 39—Statement reproducing a part of the report in case No. 26550 (omitted in print-		
ing)	2129	
No. 40-Passenger and traffic statistics (other		
than commutation) of class I steam railways		
in the United States	2134	1046
Nos. 41 to 51 inc.—. (omitted in printing)	2152	
	1 1	
CIVIL ACTION NO. 708	. 3	
Petition	2218	1047
Exhibit "A"—Corrected order of Interstate Commerce	0000	
Commission of May 8, 1944 (omitted in printing)	2233	,
Exhibit "B"—Opinion and order of Railroad Commis-		
sion of Kentucky of May 31, 1943, in Suspension Docket No. 29, Increased Passenger Fares and	- 3	- 7.4
	2235	1000
Exhibit "C"—Opinion of Interstate Commerce Com-	2200	1062
mission of March 25, 1944, in Docket 29000, Ken-		
tucky Intrastate Fares, and related cases (omitted	٠.	
in printing).	2249	
Exhibit "D"-Order of Interstate Commerce Com-	2243	
mission of May 8, 1944 denying petition of plaintiffs		
herein for reopening of Docket 29000, Kentucky In-		
trastate Fares (omitted in printing)	2278	
Exhibit "E"-Report proposed by Examiner C. E.		
Stiles in Docket 29000, Kentucky Intrastate Fares.	2279	1077
Summons and return (omitted in printing)	2294	4
Order convening three judge Court	2296	1095
Order filing affidavit of service (omitted in printing).	-2297	
Acknowledgments of service of motion for leave to intervene.	2300	1096
Motion of Economic Stabilization Director for leave to in- tervene	0000	
Complaint of Economic Stabilization Director	2302	1097
Affidavit of Doris S. Whitnack	2304	1098
Order granting intervention	2339	1118
Answer of United States of America.		1125
Intervention of Interstate Commerce Commission	2349	1125
Answer of Interstate Commerce Commission	2351 2352	1127
Motion of rail lines for leave to intervene.	2361	1135
Order granting intervention.	2364	1136
Views Brancing intersection	2001	1100

Record from D.	C. U. S., Western District of Kentucky-Co	n-	2	
tinued		Original	Print	
Answer of in	tervening rail lines	2366	1136	
Motion of p	laintiffs to dismiss answer of Interstate Com-			-
	amission	2369	1138	,
Motion of int	tervening rail lines to dismiss complaint of Fred		1	
		2371	1139	
	before Interstate Commerce Commission in			
	. 29000	2463	1140	
Transcri	pt of hearing	2463	1140	
Cap	tion and appearances	. 2463 A	1140	
Tes	timony of E. N. Aiken	2468	1142	
, a	F. H. Tucker, Jr.	2513	. 1170	
	E. M. Tolleson	2536	1185	
19 1 19 19	J. S. Tassin	2557	1199	
	J. E. Marks	2618	1237	
· · ·	P. E. Tanner	2660	1264	
1 2 2 1	Doris S. Whitnack	2666	1268	*
Exh	ibits:		***	
	No. 1-Map of Southeastern United States			
		2681		
	No. 2-Report and order of Railroad Com-	. 2001		
	mission of Kentucky in Suspension Docket			
	No. 29, May 31, 1943 (omitted in printing).	2682		
	No. 3—Examples of possible reductions of in-	2002		
	terstate fares in coaches, etc	2695	1276	-
	No. 4—Examples showing fares in coaches only	2000	1210	
	paid by interstate passengers, also by intra-			
	state passengers traveling equal distances	2699	1279	
	No. 5—Examples of possible reductions on	2000	1210	
	interstate fares for round-trip coach tickets,			
	etc.	2701	1280	
***	No. 6-Statistical findings and data in support		1200	
	thereof	2702	1282	,
	No. 7-Statement showing comparison of			
	present and proposed rail coach fares be-			
	tween representative points with bus fares.	2734	1301	
	No. 8-Statement of passenger statistics-			
	Kentucky intrastate and interstate, 1935-	* *		*
1. 1.	1942	2735	1302	
	No. 9-Various railway operating statistics of			
1.	respondent carriers, 1938-1942, inc., and			
		2744	1310	
\ .	No. 10-Summary of property investment and			4
/	operating income account (partially esti-	-	+ +	1
1	mated) of respondents for years 1938-1943,	9.		
	inc.	2755	1318	
	No. 11-Statement showing final assessments			
	of petitioners' properties in Kentucky, 1938-			
	1941, inc., etc	2757	1320	4)

#### INDEX

Record from	D.	C. U.	S., W.	estern I	District	of	Kentucky-Con-
tinued		•					

Proceedings before Interstate Commerce Commission in Docket No. 29000—Continued

Docket No. 2000—Continued		1 .
Exhibits—Continued	Original	Print
Ng. 12-Statement showing net railway oper-		
ating income before Federal income taxes,		
1936-1943	2758	1321
No. 13—Statement showing freight service		1021
operating ratio, 1936-1943.		1900
	2759	1322
No. 14—Statement showing passenger service	0700	nan
operating ratios, 1936–1943	2760	1323
No. 15—Statement showing operating rev-		-
enues and expenses assigned to passenger		
service—ten railroads operating in Ken-		
tucky	2761	1324
No. 16—Statement showing method used in	-	
assigning 1943 revenues and expenses to		
to passenger service (omitted in printing)	2762	
No. 17—Valuation data for selected railroads	1) .	
operating in Kentucky	2769	1325
No. 18-Statement of freight revenue (ac-	,	
counts 101 and 121)	2770	1326
No. 19—Statement showing investment in	4	
railway property used in transportation		1.5
service	2771	1327
No. 20-Statement of train connections at		.,
Fulton, Ky. and Louisville, Ky., June to		
August inc., 1943	2780	1335
Tagas maj 1910	2100	1000
	~ 1	
		. 14.
Findings of fact and conclusions of law	2786	1341
Opinion, Miller, J.	2790	1345
Decree	2809	1362
Clerk's certificate (omitted in printing)	2811	1
Appeal papers of Appellant States:		-fa
Notice of appeal	2812	1364
Petition for appeal	2814	1365 -
Assignments of error.	2816	1366
Order allowing appeal	2823	1373
Bonds on appeal (omitted in printing)	2825	
Citation(omitted in printing)	2836	
Praecipe for transcript of record	2838	1374
Order as to record.	2840	1375
Acknowledgments of service of praecipe	2841	1375
Appeal papers of Economic Stabilization Director:		1010
Notice of appeal(omitted in printing)	2846	
Petition for appeal	2848	1376
Assignments of error.	2850	1377
exosignments of error	2000	13//

#### INDEX

	Record from D. C. U. S., Western District of Kentucky-Continued	6.0
	Appeal papers of Economic Stabilization Director—	
*	1 Continued Original	Print
_	Order allowing appeal 2877	1379
5	Citation(omitted in printing) 2879	
	Practipe for transcript of record	1379
2	Order to transmit original record	1380 -
	Order as to record	1381
	Statement of points to be relied upon by States of Alabama and	177
	Kentucky, etc., in Case No. 574	1381
	Statement of points to be relied upon by State of Tennessee, etc.,	
	in Case No. 574	1386
	Designation of parts of record to be printed by appellants in	/
	. Case No. 574 2900	1388
	Statement of point to be relied upon and designation of parts	
	of record to be printed in Case No. 592	1391
	Order noting probable jurisdiction	1393

[fols. 420-463] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION

No. 706

THE STATE OF ALABAMA and Public Service Commission, Plaintiffs,

VS.

United States of America and Interstate Commerce Commission, Defendants

No. 707

THE STATE OF TENNESSEE and PORTER DUNLAP, et al., Constituting The Railroad and Public Utilities Commission of the State of Tennessee, Plaintiffs,

Vs.

United States of America and Interstate Commerce Commission, Defendants

No. 708

COMMONWEALTH OF KENTUCKY and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

VS.

UNITED STATES OF AMERICA, Defendant

ORDER CONVENING THREE JUDGE COURT

Pursuant to section 47 Title 28 of the United States Code, on an application made to me for preliminary or interlocutory injunction, it appearing that the Bill of Complaint in each of the above three cases is brought to enjoin the enforcement of an order of the Interstate Commerce Commission, I hereby call to my assistance for the hearing of the application and cause, the Honorable Elwood Hamilton, Judge of the Circuit Court of Appeals for the Sixth Circuit, and the Honorable Mac Swinford, District Judge of the Eastern and Western Districts of Kentucky.

This 20th of June 1944.

Shackelford Miller Jr., United States District Judge.

[fol. 464] [File endorsement omitted]

IN UNITED STATES DISTLICT COURT

No. 707

STATE OF TENNESSEE, et al., Plaintiffs,

VS.

United States of America and Interstate Commerce Commission, Defendants

Answer of United States of America—Filed July 7,

Now comes the United States of America, a defendant herein, by counsel, and in answer to the complaint says:

T

Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, has filed a motion to intervene as a plaintiff in this case and has also filed an intervening complaint seeking to have the order of the Interstate Commerce Commission here involved set aside.

#### II

A situation is thus presented where one Government agency is seeking to intervene as a party plaintiff in this case and another Government agency, the Interstate Commerce Commission, is a defendant in the same case. Under these circumstances, and in view of the fact that both Government agencies will have an opportunity to present their respective position through their own counsel, the United States has determined to remain neutral in these proceedings in the District Court, without prejudice to its supporting the position of one or the other agency in any appeal which may be taken from the decree of this court.

[fol. 465]

Accordingly, the United States neither admits nor denies any of the allegations of the complaint of the above plain-

tiffs or the intervening complaint of the Economic Stabilization Director.

Eli H. Brown, III, United States Attorney; Robert L. Pierce, Special Assistant to the Attorney General.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the above answer of the United States has been served upon each of the following named counsel this 7th day of July, 1944:

Leon Jourolmon, Jr., 123 Memorial Building, Nashville, Tennessee:

Allen B. Crenshaw, Interstate Commerce Commission, Washington, D. C.;

Charles Clark, Esq., Southern Railway System, Washington, Q. C.;

M. D. Miller, Federal Office Building, No. 1, Washington, D. C.;

Frank W. Gwathmey, Shoreham Building, Washington,

E. D. Mohr, Louisville & Nashville R. R., Louisville, Kentucky.

Eli H. Brown, III, United States Attorney.

[fol. 466] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 707

THE STATE OF TENNESSEE, et al., Plaintiffs,

United States of America and Interstate Commerce Commission, Defendants

Answer of Interstate Commerce Commission—Filed July 10, 1944

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-entitled action, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' complaint contained, and in the complaint of intervenors, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the allegations of paragraphs I, II, III, and IV of plaintiffs' complaint, the Commission admits court jurisdiction of the action herein and of the parties thereto.

## 11

The Commission admits that the plaintiffs herein have a legal right to maintain this action, and that intervenors are proper parties thereto.

## III

Further answering other allegations of the complaints. the Commission alleges that proceedings; directly and im-[fol. 467] mediately concerned in the orders herein involved, were instituted upon the filing of petitions in the Commission, by various railroads operating in the State of Tennessee, to wit: the Louisville and Nashville, the Alabama Great Southern, the Carolina, Clinchfield and Ohio, the Carolina Clinchfield and Ohio of S. C., the Central of Georgia, the Cincinnati, New Orleans and Texas, the Gulf, Mobile and Ohio, the Illinois Central, the Nashville, Chattanooga and St. Louis, the St. Louis and San Francisco, the Southern, the Tennessee, Alabama and Georgia, the Tennessee Central, and the Yazoo and Mississippi Valley, in July, 1943, complaining that intrastate coach passenger fares, to, from, and between points within the State of Tennessee, except as applied to and by the Gulf, Mobile and Ohio and Illinois Central Railroads, other than in instances where those railroads meet lower rates of competing lines. were unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce, in violation of Section 13 (3) and (4) of the Interstate Commerce Act. seeking under Commission authority, to have such advantage, preference, prejudice, or discrimination removed, as might be found to exist, and to determine what fares and charges, if any, or what maximum or minimum, or maxi-

mum and minimum fares and charges should be prescribed, to remove such advantage, preference, prejudice, or discrimination; said petitions were given Docket No. MC-29037 and hearings were held thereon before an examiner of the Commission at which time evidence was received as submitted by the various parties interested therein, including plaintiffs herein, and thereafter the several parties to the proceedings filed briefs with, and orally argued before the Commission, matters involved in said proceedings, following which the Commission entered its report of March 25, 1944; thereafter plaintiffs filed petition for reopening, [fol. 468] reargument, and reconsideration of the report of March 25, 1944, which petition was denied by order dated May 8, 1944; under corrected order issued May 24, 1944, rail carrier respondents in the above proceedings were required to establish on or before July 1, 1944, later extended to August 1, 1944, and to thereafter maintain and apply, passenger fares for intrastate transportation in Tennessee, and in the States of Alabama, North Carolina, and Kentucky, also involved in said proceedings under the same report and order, on a basis no lower than the passenger · fares presently maintained and applied by the respective respondents, for like accommodations in interstate transportation to, from, and through the said states, and providing that the resulting aggregate charge, made by any of said respondents for intrastate transportation in any ofthe said states, shall not exceed the aggregate charge made for like accommodations for a like distance by the same respondents in interstate transportation to, from, or through such states.

The Commission further alleges that the proceedings, report, and orders here involved, indirectly and collaterally relate to previous consideration, decisions, and orders of the Commission, in respect to the determination of reasonable passenger fares in interstate commerce, particularly with reference to such fares in Southern Passenger Association territory, generally located east of the Mississippi River and south of the Ohio and Potomac Rivers, such consideration and decisions covering a period of many years prior to the report involved in this action, a summary of that previous consideration, and of reports and orders issued in connection therewith, being set forth in the Commission report of March 25, 1944, 258 I. C. C. 133, at pages 134, 135, 136, and 137, under the heading of "History of

Rail Fares." Such interstate fares, so determined by the [fol. 469] Commission as reasonable, provide the basis of comparison, standard or relation to the intrastate fares here involved. Previous Commission consideration of such interstate fares discloses that passenger fares in said southern territory for many years, up to June 10, 1918, were generally 2.5 cents per mile in all classes of equipment, on which last-named date, the Director General of Railroads increased the fare to 3 cents per mile in all classes of equipment, which said increased fare remained in effect, except that from June 10 to November 30, 1918, an additional charge of 16% percent of the one-way fare was assessed for travel in sleeping and parlor cars, until August 25, 1920, when fares generally were raised to 3.6 cents per mile in all classes of equipment, plus a surcharge in sleeping and parlor cars; that during 1932 and 1933 certain rail carriers operating in southern territory experimented with lower fares, in attempts to attract passenger business in competition with private automobiles and busses, as set forth in said report of March 25, 1944, at pages 134 and 135; the said higher passenger fares of 3.6 cents per mile, established August 26, 1920, with exception of the exeprimental lower fares established by certain rail carriers, remained in effect until February 28, 1936, when the Commission by its report in Passenger Fares and Surcharges, 214 I. C. C. 174, reviewed railroad passenger fares throughout the nation, found the basic fares to be unreasonable, and prescribed maximum reasonable fares of 2 cents per mile, oneway and round-trip in coaches, and 3 cents per mile one-way and round-trip in Pullman cars, without prejudice to the maintenance of lower fares in coaches or Pullmans, and finding that the Pullman surcharge was unreasonable, requiring the same to be canceled, and finding that the existing experimental fares in southern territory were not unreasonable or otherwise unlawful; that on November 15, 1937, carriers maintaining the experimental coach fares of [fol. 470] 1.5 cents, increased that fare to 2 cents per mile, but restored the 1.5-cent fare on January 15, 1939, with certain southern lines, including Illinois Central, Mobile and Ohio, St. Louis-San Francisco, and Norfolk and Western Railway, which said lines retained the 2-cent basis, with some exceptions in meeting competition of other lines.

In a proceeding designated as Ex Parte 148, instituted at the instance of the railroads, the Commission by order

of January 21, 1942, authorized a 10 per cent increase in passenger fares, held to be reasonable and otherwise lawful, and necessary to enable the rail carriers to render adequate and efficient transportation service during the national emergency, the said report being entitled Increased Railway Rates, Fares, and Charges, 1942, 248 I. C. C. 545, 565, 566. Under the 10 per cent increase of passenger fares the reestablished coach fares of 1.5 cents, which had remained in effect until February 10, 1942, became 1.65 cents, and fares of 2 cents became 2.2 cents and fares of 3 cents became 3.3 cents, with round-trip fares modified to reflect the increases in the one-way fares, such increased fares upon various subsequent dates having also become effective on intrastate traffic in all states. Upon petition of rail carriers in southern territory filed July 14, 1942, the Commission authorized such carriers to increase the lower interstate passenger fares in coaches in that territory to 2.2 cents a mile, the order being entered on August 1, 1942, and such increased fares were published to become effective October 1, 1942, and have since remained in effect on interstate traffic. Thereafter, with the approval of the regulatory authorities of the States of Florida, Georgia, Louisiana, Mississippi, Virginia, and South Carolina, the intrastate one-way and round-trip coach fares and the round-trip fares in sleeping and parlor cars, were increased to the respective levels of the corresponding interstate fares, and the regulatory authorities of Alabama, North Carolina, Tennessee and Kentucky declined to authorize [fol. 471] the increases, sought by the rail carriers, in oneway and round-trip coach fares, and Alabama and Tennessee also declined to authorize increase in the round-trip fares in sleeping and parlor cars. The refusal of the States of Alabama, North Carolina, Tennessee, and Kentucky to authorize the increases of passenger fares to the level of the interstate fares, was the basis of petitions of rail carriers; in the proceedings herein involved, that the resulting differential in favor of intrastate fares, as compared to the interstate fares, results in a violation of Section 13 (3) and (4) of the Act.

The report of March 25, 1944, embraced, considered, and decided the subject of proceedings in Nos. MC-29037, Tennessee Intrastate Fares, and also No. MC-29000, Kentucky Intrastate Fares, No. MC-29036, North Carolina Intrastate Coach Fares, and MC-28963, Alabama Intrastate Fares,

and found. (1) that interstate one-way and round-trip coach fares in effect to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee, and interstate round-trip fares in sleeping and parlor cars in effect to, from, and through points in Alabama and Tennessee are just and reasonable, (2) that intrastate one-way and roundtrip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain designated exceptions, and intrastate round-trip fares in sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding fares applicable interstate, and intrastate generally throughout southern territory, except as to the states named, (3) that conditions affecting the transportation of passengers incoaches in the said four states, and in sleeping and parlor cars in Alabama and Tennessee, intrastate, on the one hand, and interstate to, from and through those respective states, on the other, are substantially similar, (4) that interstate passengers in these states travel in the same trains, and generally in the same cars with intrastate passengers, but are forced to pay higher fares than the intrastate passen-[fol. 472] gers for like services, to the undue and unreasonable advantage and preference of intrastate passengers, and the undue and unreasonable disadvantage and prejudice of interstate passengers, (5) that respondent rail carriers' revenues under the lower intrastate fares; are less by at least \$725,000 per annum in Alabama, \$500,000 in Kentucky, \$525,000 in North Carolina, and \$525,000 in Tennessee, than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues, required to enable respondents to render adequate and efficient transportation service, and (6) that the maintenance of such intrastate fares, to the extent that they are lower than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce. and undue, unreasonable and unjust discriminations against interstate commerce, and that this unlawfulness should be removed by increasing the said intrastate fares in the respective states to the level of the corresponding interstate fares contemporaneously maintained by respondent carriers, to, from, and through such states, provided that the aggregate charge made by any of respondents for the intrastate transportation in any of the states, shall not exceed the aggregate charge made for like accommodations for a like distance by the same respondents for interstate transportation to, from, or through such state. These findings were made without prejudice to the right of authorities of the affected states, or of any interstate party, to apply for modification thereof as to any specific interstate fare, on the ground that such fare is not related to interstate fares in such a way as to contravene the provisions of the Interstate Commerce Act.

[fol. 473] IV

The Commission further alleges that the findings and conclusions in said report of March 25, 1944, were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid, and that, in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to the said proceedings by their respective counsel.

The Commission further alleges that said report and order, above referred to, was not made or entered either arbitrarily or unjustly, or without proof or contrary to the relevant evidence, or without evidence to support it, that in making said report and order the Commission did not exceed the authority conferred upon it by law, and denies each of and all of the allegations to the contrary contained in the complaints.

Except as herein expressly admitted, the Commission denies the truth of each of and all of the allegations contained in the complaints, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in the said report of March 25, 1944, above referred to.

#### $\mathbf{v}$

The Commission specifically denies the allegations contained in paragraphs XII, XIX, XX, and XXI.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed. Interstate Commerce Commission, by Allen Crenshaw, Attorney.

Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 474] Duly sworn to by Claude R. Porter. Jurat omitted in printing.

[fol. 475] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 707

STATE OF TENNESSEE and RAILROAD AND PUBLIC UTILITIES COMMISSION, Plaintiffs,

v.

THE UNITED STATES and THE INTERSTATE COMMERCE COM-

Answer of Rail Lines, Intervening Defendants—Filed July 12, 1944

Come now, in due season, rail lines operating in the State of Tennessee, who are intervening defendants herein, and file this, their joint and several answer to the complaint or petition herein filed by the State of Tennessee and Railroad and Public Utilities Commission.

Ι

These intervening defendants hereby adopt the answer herein filed on behalf of Interstate Commerce Commission, a defendant in said cause, as their answer in the same manner and to the same extent as though each paragraph thereof were herein fully set out.

#### П

Further answering, these defendants specifically deny the averments in paragraphs X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, and XXI.

[fols. 476-477] Wherefore, having answered, these intervening defendants pray that the petition or complaint

herein be dismissed.

E. A. Smith, Illinois Central Railroad Co., Chicago, Illinois. W. L. Grubbs, Louisville & Nashville RR. Co., Louisville, Ky. Y. D. Lott, Jr., Gulf, Mobile & Ohio Railroad, Mobile, Ala. F. W. Gwathmey, 1110 Shoreham Bldg., Washington, D. C. Charles Clark, Southern Railway Office Bldg., 15th & K Streets, N. W., Washington 13, D. C.

[fol. 478] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action, No. 707

STATE OF TENNESSEE and RAILROAD AND PUBLIC UTILITIES COMMISSION.

THE UNITED STATES and THE INTERSTATE COMMERCE Commission, Defendants

MOTION FOR LEAVE TO INTERVENE-Filed July 12, 1944 Come now, under and by virtue of Title 28, U.S. C. Section 45a,

The Alabama Great Southern Railroad Company, Carolina, Clinchfield and Ohio Railway of South Carolina, operated as Clinchfield Railroad by Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company, Lessees, Central of Georgia Railway Company (M/P. Calla-

way, Trustee),

The Cincinnati, New Orleans and Texas Pacific Railway Company,

Gulf, Mobile and Ohio Railroad Company,

Illinois Central Railroad Company,

Louisville and Nashville Railroad Company,

The Nashville, Chattanooga & St. Louis Railway,

St. Louis-San Francisco Railway (J. M. Kurn and John G. Lonsdale, Trustees);

Southern Railway Company, .

Tennessee, Alabama and Georgia Railway,
Tennessee Central Railway Company and
The Yazoo and Mississippi Valley Railroad Company,

and move the court for leave to appear and intervene in the above-stated case and to become parties defendant thereto in order to protect their rights involved in said case.

[fol. 479] Each of said movants is and for some years has been a corporation, or receivers of a corporation, engaged in operating a railroad within the State of Tennessee, and by its own rails or in connection with the rails of some one or more of the other movants engaged in operating a line of railroad between points within the State of Tennessee and points in other states within Southern territory; Southern territory is familiarly described and known as embracing those states lying south of the Ohio and Potomac Rivers and east of the Mississippi River;

And as such corporations, or receivers thereof, each of said movants has operated and is now operating as a common carrier of passengers by railroad intrastate within the State of Tennessee and interstate within Southern territory; and as such has been and is subject to the provisions of the Act of Congress known as the Interstate Commerce Act;

And said movants, jointly and severally, are vitally interested in the subject matter of this complaint. They are the common carriers by railroad operating within the State of Tennessee upon whose petition the Interstate Commerce Commission instituted the investigation docketed No. 29037 in which the report of March 25, 1944, and the orders of May 8, 1944, set out as Exhibits B, A, and C, respectively, to the complaint herein were made and issued.

[fol. 480] And each of said movants desires to here appear and intervene on behalf of defendants, United States of America and Interstate Commerce Commission, and

to answer the bill of complaint and participate in the trial thereof as a party defendant.

E. A. Smith, Illinois Central System, 135 East 11th Place, Chicago 5, Ill. W. L. Grubbs, Louisville & Nashville R. R. Co., Louisville 1, Ky. Y. D. Lott, Jr., Gulf, Mobile & Ohio R. R. Co., Mobile 5, Ala. F. W. Gwathmey, 1110 Shoreham Bldg., Washington 5, D. C. Charles Clark, Southern Railway Office Bldg., 15th & K Streets, N. W., Washington 13, D. C. Attorneys for Movants.

## [fols. 481-482]

## ORDER

The foregoing motion read and considered; let the same be filed; and it is further ordered that the motion be allowed and that the movants, and each of them, be and they are hereby made parties defendant in the above-entitled cause.

Shackelford Miller, Jr., United States District Judge. This 12th day of July, 1944.

[fol: 483]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 707. Civil

STATE OF TENNESSEE and RAILROAD AND PUBLIC UTILITIES
COMMISSION, Plaintiffs

#### V.

THE UNITED STATES and THE INTERSTATE COMMERCE COMMISSION, Defendants

Motion to Dismiss Complaint of Fred M. Vinson, Director of the Office of Economic Stabilization—Filed July 17, 1944

Come now, in due season, the railroad intervening defendants in the above-stated cause, and file this, their motion to dismiss the complaint of Fred M. Vinson, director of the Office of Economic Stabilization, an intervening party plaintiff, upon the following grounds:

I

Said Complaint of Director Vinson fails to state a claim upon which relief can be granted in this cause.

## II

In the first paragraph of the prayer of the complaint of said Director Vinson, he asks "that the constitutional and judicial matters be tried de novo with respect to the allegations of paragraph 17 hereof."

No intervening party plaintiff may assert an interest or raise an issue greater or beyond the scope of the interest and issues raised in the original suit. In the proceedings in this cause before this Court the original plaintiffs are not entitled to a trial de novo; said original parties [fol. 484] plaintiff are limited to the evidence and record which was before the Interstate Commerce Commission in the proceeding before it giving rise to the order attacked in the original suit in this Court. Said complaint of Director Vinson undertakes to inject new and additional evidence to that which was before the Interstate Commerce Commission in Dockets 28963 (Alabama), 29000 (Kentucky), and 29037 (Tennessee); and seeks a trial de novo in this Court.

Wherefore, the railroads, who are intervening defendants in this cause, move the dismissal of said Director Vinson's complaint, or so much thereof as unduly broadens the interest and issues raised in the original complaint,—that is to say, specifically, strike paragraph numbered 17 and the affidavit of Doris S. Whitnack and its accompanying tables referred to in said paragraph 17, and strike the first paragraph from the prayer of said Director Vinson's complaint numbered "First."

E. A. Smith, I. C. RR. Co. Chicago, Ill.; W. L. Grubbs, L. & N RR. Co., Louisville, Ky.; Y. D. Lott, Jr., G. M. & O. RR., Mobile, Ala.; F. W. Gwathmey, 1110 Shoreham Bldg., Wash., D. C.; Charles Clark, Southern Ry. Office Bldg., 15th & K Sts., N. W., Wash. 13, D. C., Attorneys for the Railroad Intervening Defendants.

[fols. 485-590] Copy received. Further service waived. 7/17/44. Leon Jourolmon, Jr. Attorney for State of Tennessee; Leon Jourolmon, Jr., Railroad & Public Utilities Commission, M. D. Miller, Vinson director.

[fol. 591] Before the Interstate Commerce Commission

## Docket No. 29037

In the Matter of Passenger Fares and Charges for Intrastate Traffic Between Points in Tennessee

Petition on Behalf of Railroads Operating in the State of Tennessee—Filed September 10, 1943

[fal. 592] To the Interstate Commerce Commission ;

The Alabama Great Southern Railroad Company, Carolina, Clinchfield and Ohio Railway of South Carolina (Lessees: Atlantic Coast Line Railroad Company; Louisville and Nashville Railroad Company), Central of Georgia Railway Company (M. P. Callaway, Trustee), The Cincinnati, New Orleans and Texas Pacific Railway Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company, The Nashfol. 593] ville, Chattanooga & St. Louis Railway, St. Louis-San Francisco Railway (J. M. Kurn and John G. Lonsdale, Trustees), Southern Railway Company, Tennessee, Alabama & Georgia Railway Company, Tennessee Central Railway Company and The Yazoo and Mississippi Valley Railroad Company present this petition and respectfully show:

1

Petitioners are common carriers by railroad and are engaged, according as their respective lines are located, in the transportation of passengers and freight in interstate commerce to, from, and between points in the State of Tennessee, and are likewise engaged in the transportation of passengers and freight in intrastate commerce between points within the State of Tennessee. As such common carriers, each of your petitioners is subject to the provisions

of the Acts of Congress known as the Interstate Commerce Act, as amended, and the Transportation Act of 1940.

This petition is filed pursuant to the provisions of the said Acts of Congress and more particularly Sections 3, 13, and 15(a) of the said Interstate Commerce Act, as amended.

 $\mathbf{II}$ 

In Passenger Fares and Surcharges, 214 I. C. C. 174, the Commission found that passenger fares of 2 cents per mile in coaches would be reasonable for application throughout the United States. At the same time it found that the "experimental" fare of 1.5 cents per mile for one-way transportation in coaches, which was then being maintained by most of the railroads operating in Southern Passenger Association territory, was not unlawful. Thereafter, effec-[fol. 594] tive November 15, 1937, the railroads operating in Southern Passenger Association territory, including your petitioners, increased their basic coach fare, interstate and intrastate, to 2 cents per mile; but, effective January 15. 1939, these railfoads, with certain exceptions, restored the experimental fare of 1.5 cents per mile which had previously been in effect. This subnormal fare was restored by the lines in question because of a conviction that the reduction was necessary under the circumstances then existing in order to attract passenger traffic to the railroads. Among the railroads which continued to maintain the basic fare of 2 cents per mile for travel in coaches, both interstate and intrastate, were four of your petitioners, namely, the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, the St. Louis-San Francisco. Railway Company and the Yazoo and Mississippi Valley Railway Company. Even these latter railroads, however, reduced their fares between certain points where competition with other rail lines whose fares had been reduced to 1.5 cents per mile required such reductions.

## III

By its order of January 21, 1942, in Ex Parte No. 148, Increased Railway Rates, Fares, and Charges, 1942, 248. I. C. C. 545, this Commission approved a proposed uniform increase of 10 per cent in all passenger fares and charges, with certain provisions as to the disposition of fractions. Thereupon, interstate passenger fares throughout the

United States were increased 10 per cent, effective February 10, 1942. The basic interstate coach fare of 1.5 cents per mile generally in effect in the South thus became 1.65 [fol, 595] cents, and the basic coach fare of 2 cents per mile generally in effect throughout the rest of the United States became 2.2 cents. The same increase of 10 per cent was authorized by the Railroad and Public Utilities Commission of the State of Tennessee in the Tennessee intrastate fares and effective February 10, 1942, your petitioners, with the exception of the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, the St. Louis-San Francisco Railway Company and the Yazoo and Mississippi Valley Railway Company, increased their basic coach fare in Tennessee to 1.65 cents per mile. The Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, the St. Louis-San Francisco Railway Company, and the Yazoo and Mississippi Valley Railway Company, which had in effect a basic coach fare of 2 cents per mile, on the same day increased their intrastate fares to 2.2 cents per mile.

## IV .

On July 14, 1942, substantially all of the railroads operating in Southern Passenger Association territory, including all of your petitioners, filed a petition with this Commission for the authority necessary to enable them to increase all fares for one-way interstate transportation in coaches to 2.2 cents per mile, thereby seeking to establish the same basis of fares for transportation in coaches throughout Southern Passenger Association territory as applied elsewhere throughout the United States.

Upon consideration of said petition, this Commission, on August 1, 1942, entered an order reading, in part, as follows:

[fol. 596] "And it further appearing, That a basic coach fare of 2 cents per mile was approved by the Commission for application prior to Ex Parte No. 148 on railroads generally throughout the country, including the lines of said petitioners; that a general increase of 10 per cent was authorized to be made in all passenger fares in Ex Parte No. 148, for the reasons set forth in the report therein, supra; and that a basic coach fare of 2.2 cents per mile is now maintained on

Class I railroads generally throughout the country, with the exception of the aforesaid petitioners:

"It is further ordered, That the order of January 21, 1942, in Ex Parte No. 148, be, and it is hereby, further modified so as to authorize the aforesaid petitioners to apply the increase of 10 per cent approved in said order to a basic coach fare of 2 cents per mile on the lines of said petitioners, subject to the rule for the disposition of fractions as modified by order of July 6, 1942, in said proceeding, and that in all other respects said order of January 21, 1942, shall remain in full force and effect."

Pursuant to the authority of said order, your petitioners and other railroads operating in Southern Passenger Association territory filed tariffs with this Commission to become effective October 1, 1942, increasing the basic fare for one-way interstate transportation in coaches to 2.2 cents per mile. The tariffs became effective October 1, 1942, and are now in effect throughout Southern Passenger Association territory, including Tennessee.

[fol. 597] On the same date, your petitioners and the rail-roads generally in all territories established a uniform basis of interstate round-trip fares in lieu of the round-trip fares constructed on various basic rates and with varied return limits which had previously been in effect. The round-trip coach fares so established are three-months limit fares made on the basis of 180 per cent of the one-way coach fares of 2.2 cents per mile for the round trip, or 1.98 cents per mile traveled. The round-trip fares good for transportation in sleeping or parlor cars, established at the same time, are likewise three-months limit fares but are on the basis of 2.75 cents per mile.

V

On or about October 26, 1942, petitioners filed with the Railroad and Public Utilities Commission of Tennessee

<sup>\*</sup>The supplemental order of July 6, 1942, in Ex Parte No. 148, here referred to, provides that "fractions of less than 0.5 cent shall be dropped and fractions of 0.5 cent or greater may be increased to the next whole cent."

tariffs designed to make uniformly effective on December 1, 1942, for intrastate travel in Tennessee, the basic one-way coach fare of 2.2 cents per mile which had already been established by petitioners for interstate travel, as hereinbefore shown, and to make effective also, at the same time, the uniform round-trip fares which had been established for interstate application on October 1, 1942.

and the first standing from the live of the

Pursuant to the provision of the Act of Congress entitled "An Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and For Other Purposes," approved October 2, 1942, Executive Order 9250, dated October 3, 1942, and Order No. 1 of the Director of Economic Stabilization, dated October 14, 1942, your petitioners gave due notice to the Price Administrator of the Office of Price Administration of the proposed increases in their fares for intrastate transportation of passengers be-[fol. 598] tween points in Tennessee, and consented to the timely intervention by the Price Administrator before any state or federal authority having jurisdiction to consider such increases.

The Railroad and Public Utilities Commission of Tennessee on its own motion suspended the tariffs pending a hearing thereon, and after due notice held a hearing on May 13, 1943, at Nashville, Tenn., at which time and place your petitioners offered evidence fully justifying the changes proposed in their intrastate fares for the purpose of putting them upon the interstate level.

On August 30, 1943, the Railroad and Public Utilities Commission of Tennessee issued its opinion and order, cancelling the suspended tariffs and directing the respondent railroads to leave in full force and effect the rates which were in effect immediately prior to the date of suspension.

A copy of the said opinion and order appears as an appendix to this petition.

Petitioners aver that the interstate passenger fares and charges which they now have in effect are just and reasonable, and that the passenger fares and charges which they are required to maintain for intrastate application in Tennessee as a result of the order of the Railroad and Public Utilities Commission of Tennessee, above referred to, denying them the right to increase such fares and charges to

the interstate level, cause an undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce in Tennessee, on the one hand, and interstate commerce, on the other hand, and un[fol. 599] due, unreasonable, and unjust discrimination against interstate commerce in violation of the Interstate Commerce Act, as amended, and particularly Sections 3 and 13 of said Act.

Petitioners further aver that by reason of the application of the said intrastate fares and charges within the State of Tennessee they are being deprived of a large amount of revenue to which they are rightfully entitled, and that this loss in revenue results in an undue burden upon and a discrimination against interstate commerce and an undue preference of intrastate commerce in violation of the Interstate Commerce Act, as amended. Petitioners are also being subjected to further losses by reason of interstate passengers purchasing tickets to points in Tennessee on or near the border and repurchasing at such points.

Petitioners further show that if the intrastate passenger fares and charges which they are now required to maintain for intrastate application in Tennessee are allowed to remain in effect the purpose of the Interstate Commerce Act will be defeated, and the result will be a continuing undue and unreasonable advantage and preference of intrastate commerce, and a continuing undue prejudice and undue, unreasonable, and unjust discrimination against interstate commerce and as between persons and localities.

Wherefore, your petitioners pray that the Commission institute at an early date an investigation with respect to the matters and things herein set forth; that, after due notice has been given to the State of Tennessee and the authorities thereof, and after such hearing or hearings as the Commission may direct, an order be entered declaring discriminatory, prejudicial, unjust, and unlawful, and as cre-[fol. 600] ating undue burden upon interstate commerce, any fares or charges required to be observed for the intrastate transportation of passengers within the State of Tennessee as a result of the order of the Railroad and Public Utilities Commission of Tennessee, hereinbefore referred to, which are less than the fares and charges now mufintained by petitioners for like and similar service in interstate trans-

portation; that this Commission by its order prohibit such advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, and such unjust discrimination against and undue and unlawful burden upon interstate commerce, and prescribe the fares and charges or the maximum and minimum thereafter to be charged in connection with the intrastate transportation of passengers within the State of Tennessee in such manner as in its judgment will remove the advantage, preference, prejudice, and discrimination aforesaid; and petitioners pray for such other general relief in the premises as to this Commission may seem right and proper.

Respectfully submitted, W. A. Northcutt, Elmer A. Smith, Charles Clark, L. L. Oliver, Chas. P. Reynolds, Frank W. Gwathmey, Attorneys for Petitioners.

Washington, D. C. Sept. 8, 1943.

[fol. 601]

APPENDIX

# BEFORE THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, NASHVILLE

I. & S. Docket No. 2535 Re: Increased Passenger Fares, 1942

# Appearances?

C. P. Reynolds, All Respondents.

W. C. Burger, Louisville & Nashville Railroad.

H. B. Schneiber, Office Price Administrator.

J. F. Gaffney, Jr., Nashville, Chattanooga and St. Louis Ry.

C. S. Blackman, Tennessee Central Railway.

E. J. Meade, Illinois Central Railroad.

E. S. Clements, Southern Railway.

During Nov. 1942, all Tennessee carriers by rail filed new and advanced passenger fare rates applicable to intrastate passenger traffic in Tennessee. The new and proposed passenger fare rates as compared with the present passenger fare rates are as follows:

[fol. 602]	In Co	ents Per Mile Tra	iveled	
Types of Passenger Service	Present Basic Fare	Present Fare Including 10% Ex Parte Rate 148	Proposed Fare	
In Coaches	raie	Itale 140	Q raic	
One Way		1.65 1.485	2.20 1.98	
In Parlor or Sleeping Cars	1			
30 Day Limit Round Trip	2.25	2.475	2.75	
3 Months Limit Round Trip	• 2.50	2.75	2.75	
6 Months Limit Round Trip	2.50	2.75	3.30	

These new and advanced passenger fare rates were suspended by the Commission in its order entered November 25, 1942, and this Commission upon its own motion, without formal pleading entered upon a hearing concerning the lawfulness of the advanced passenger fare rates and to prescribe just, and reasonable passenger fare rates for future application.

. A full and complete hearing was held before the Commission on May 13, 1943.

In answering a question of the Chairman, Counsel for respondents replied as follows:

"Mr. Reynolds: " I may say that it is not our purpose to introduce a lot of witnesses and figures to show what would be a reasonable rate.

What we propose to do, very briefly, is to give the history of the present rate, of 1.65 cents per mile, and show the Commission that it is a depressed rate, which was put in to meet bus competition primarily; and then to show the Commission also that the rate we propose, the rate of 2.2 cents per mile has been approved by the Interstate Commerce Commission for application all over the country, including points in the south, and that it has also been approved by several of the southern Commissions for intrastate applications in the southern states, and also we wish to show [fol. 603] that 2.2 a mile is much less than the fare in effect during the last World War, and in fact that it is much less than the fare prior to 1933, and that will be done by Mr. Gaffney in his testimony.

In view of the fact that the Commission in Docket 2650, the so-called general passenger fare investiga-

tion, approved a basic fare of 2 cents as reasonable for allocation throughout the entire United States, and in view of the further fact that they included the 10 percent increase in this fare in Ex Parte 148, when it was first heard, and declined to remove it when the case was further heard, we have not felt it necessary to go into any great detail in this hearing as to the reasonableness of the rate."

It was therefore apparent that respondent carriers were depending more upon uniformity than upon the reasonableness of the rates per se, to prove the lawfulness of the new and increased passenger fare rates in Tennessee.

The so-called streamline trains were referred to as the major improvement in passenger transportation yet offered the public and that every convenience and luxury has been installed in these trains such as de luxe coaches, air conditioning, excellent dining cars where delicious meals were served at low prices, all of which is true, but, these trains are primarily for interstate travellers, and in some instances their stops are so arranged that intrastate passengers in Tennessee are not allowed the privilege of riding said streamlined trains. However, the request for increased rates on account of such additional services performed by the carriers should be accompanied by a showing of increased cost and the necessity for greater revenue to maintain their services:

[fol. 604] Respondents offered much testimony showing how expenses of a typical Tennessee railway (N. C. & St. L. Ry.), had increased since 1941. The following table of "Ratios Expenses to Revenue" proves conclusively that revenues show a much greater increase than expenses.

## Ratio Expenses to Revenue

	•		5.	1941		1942	4 1	mo.	1943	
C. N. O. & T. P. Ry.	:	 		57.8		53.1		50.		1
Southern Ry		 		63.3	-	55.6	٠.	52		1
L. & N. RR				65.3		58.7		55.	0	
I. C. RR		 	-	72.7		68.2		65.	0	
G. M. & O. RR		 		.68.2	1.0	62.3		58.	3 .	
Tenn. Central Ry:		 		74.4	and or or or or or	.74.7		71.	6	
Clinchfield:		 		41.6		41.9.		44.	1	
N. C. & St. L. Ry		 		71.8		63.6	- 6	60.	5	

In 1941 it cost the Nashville, Chattanooga and St. Louis Railway 71.8 cents to earn a dollar, while for the first 4 months of 1943 it cost that carrier only 60.5 cents to earn a dollar. Considering the increased volume of traffic and the lower transportation cost per dollar of revenue, the gain in Net Railway Operating Income is phenominal, as demonstrated below:

N. C. St. L. Ry. Net Operating Income: 1941 \$3,309,419. 4 mo. 1943 2,319,371.

Much statistical information purporting to show that passenger business of respondent lines was handled at a loss was presented. The information would have carried much weight had it allowed credit for both passenger and allied services. As it was, every passenger train expenses was considered but only passenger fares, and no allied service, was credited. However, the following table which does not include allied service shows that any deficit which was [fol. 605] more than eliminated in 1942 was for the first 4 months in 1943 turned into a net which contributed its share to the revenues of the southern district carriers as a whole enabling them to earn a return of more than 7 per cent upon their property investment.

## Passenger Revenues

, Road	1941	1942	4 months 1943	
C. N. O. & T. P. Ry	\$1,859,009	\$4,206,668	\$2,098,589	
Southern Ry	14.232.779	36, 265, 338	16,657,904	
L. & N. RR		23.288.244	14.239.382	
I. C. RR	11,491,056	19,941,145	9,476,901	
G. M. & O. RR	619.770	1.361.108	811.790	
Tenn. Central Ry		187,386	155,758	
Clinchfield RR.:	58,032	87,422	48,877	
N. C. & St. L. Ry	1,706,194	4,654,317	2,408,897	
			1	
Totals	38,999,208	89,991,628	45,898,093	

Page 3, of Exhibit No. 3, indicated that for the N. C. & St. L. Railway, passenger revenues must be increased 40 per cent over 1941 passenger revenue in order to wipe out a net railway operating deficit from passenger operations. 1942 passenger revenue was increased over 1941 passenger revenue 172.79 per cent. Using the first four months of 1943 as a guide passenger revenue for 1943 would exceed 1941 by 323.56 per cent. Add to these increases the revenues derived from allied services and it will be made apparent that a typical Tennessee line, as selected by respondents that is the N. C. & St. L. Railway, is not in need of additional passenger revenue.

Information requested by the Commission which was furnished by the respondents subsequent to the hearing, indicates that by including allied service revenue, as well as passenger revenue, the net Railway Operating deficit-passenger for 1941 was \$675,092, while for 1942 it had a net of \$709,082, or an increase of \$1,384,174, in net Railway Operating Income-passenger.

[fol. 606] We are Therefore of the Opinion and Find, That the advanced rates suspended by the Commission in its order in this cause, entered November 25, 1942, were not

proven to be just, reasonable or non-compensatory.

It is Therefore Ordered, That said respondents be and they are hereby notified and required to cancel the suspended rates leaving in full force and effect those rates in effect immediately prior to the date of suspension, namely:

Types of Passenger Service TIN Cents Per Mile Traveled

In Coacnes	
One way	1.65
15 day limit	1.485
In Parlor or Sleeping Cars	
30 day limit round trip	2.475
3 months limit round trip	2.75
6 months limit round trip	2.75

We Find these fares to be just, reasonable and compensatory, and,

It is Further Ordered, That the fares herein approved shall remain in effect until 6 months after the termination of the present war, unless sooner modified by appropriate order of this Commission, and,

It is Further Ordered, That 6 months after the termination of the present war increases permitted in this Commission's order entered May 12, 1942 will expire, and

'It is Further Ordered, That jurisdiction of this proceeding should be and it is hereby retained for the purpose of [fol. 607] entering such order or orders as the Commission may find to be just, reasonable and proper.

Porter Dunlap, Chairman. Leon Jourolmon, Jr., Commissioner. John C. Hammer, Commissioner.

Nashville, Tenn., Aug. 30, 1943.

[fol. 608] Before Interstate Commerce Commission

In the Matter of Passenger Fares and Charges for Intrastate Traffic Between Points in Tennessee

Answer to Petition on Behalf of Railroads Operating in the State of Tennessee—September 23, 1943

[fol. 609]. Comes now the Railroad and Public Utilities Commission of the State of Tennessee and registers its objection to the petition dated September 8, 1943, in behalf of railroads operating in the State of Rennessee, in which petition petitioners pray that the Interstate Commerce Commission institute an investigation with respect to any fares and charges required to be observed for the intrastate transportation of passengers within the State of Tennessee as a result of an order of the Tennessee Commission entered August 30, 1943, which said order is set out in detail as an appendix to the petition.

We quote Headnote 2, of a decision of the Supreme Court, (Georgia Public Service Commission et al., v. United States

[fol. 610] of America et al., 283 U. S. 765-775):

"It is true that when state rates are assailed on the ground that they result in undue prejudice to interstate shippers or discriminate against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable, as it may not require intrastate rates to be raised above a reasonable level. Virginia Corp. Commission v. Aberdeen & R. R. Co. 136 Inters. Com. Rep. 173, 180. But the reasonableness of the interstate rates had already been found when they were established in the earlier stage of the proceedings; and at those hearings the Georgia Commission and the Highway Board were represented. Nearly eighteen months had elapsed since the original order, but no evidence was offered at the supplemental hearing to show that conditions had so changed since the interstate rates were prescribed as to require reconsideration of the issue. The appellants' of jection to the procedure is unfounded."

Our order as heretofore referred to show conclusively that petitioners made no attempt to prove the reasonableness of the rate.

It is evident that the Interstate Commerce Commission's permissive order as referred to on page 5 of petition on behalf of railroads operating in Tennessee was based upon conditions prior to January 21, 1942. Conditions subsequent to January 21, 1942 have so changed as to require reconsideration of any issue involving passenger fare rates during 1943.

Passenger fare revenues of petitioners for 1942 were in-

creased 130.75 percent over 1941.

[fol. 611] Passenger fare revenues of petitioners for 7 months in 1943 were increased 313.16 percent over corresponding period of 1941.

Passenger fare revenues of petitioners for 7 months of 1943 were increased 113.29 percent over corresponding

period of 1942.

Ratios of expenses, maintenance and transportation to revenues have been materially decreased, proving that increases in revenues far exceeded increases in expenses.

In 1941 carriers in southern district earned 4.35 percent upon property investment. For 12 months ending June 30, 1943, same carriers earned 7.01 percent upon property investment.

Take two typical Tennessee lines. In the first 3 months of 1943, The Nashville, Chattanooga and St. Louis Railway passenger revenues exceeded its passenger revenues for the entire year of 1941. In the first 2 months of 1943, the Tennessee Central Railway passenger revenues exceeded its passenger revenues for the entire year of 1941.

All of the above and foregoing proves conclusively that this Commission's order of August 30, 1943, is more than

justified.

We earnestly assert and contend that the order of the Tennessee Commission places no burden upon interstate commerce and that it does prescribe just and reasonable rates which if adopted by all carriers by rail in Tennessee [fol. 612] on both interstate and intrastate passenger traffic would earn for said carriers a more than reasonable return upon the value of its property investment.

We also earnestly assert and contend that the petition dated September 8, 1943, on behalf of the railroads operat-

ing in the State of Tennessee should be denied.

For further details see appendix attached hereto, which said appendix is hereby referred to and made a part hereof.

Wherefore, The Railroad and Public Utilities Commission of the State of Tennessee prays that the Interstate Commerce Commission will deny the petition of railroads operating in Tennessee, dated September 8, 1943.

Respectfully submitted, Porter Dunlap, Chairman; Leon Jourolmon, Jr., Commissioner; John C. Hammer, Commissioner.

Nashville, Tenn., Sept. 22, 1943.

[fol. 613]

Certificate of Service

This is to certify that I have served the foregoing document upon Prentice M. Brown, Price Administrator, and Attorneys for carriers filing the petition.

J. O. Hendley, Rate Expert.

Nashville, Tenn., Sept. 22, 1943.

[fol. 614]

	T dissec	nger mev	enace			
					7 mo.	071040
						%1942
					7 mo.	over
Road		1941	-	1942	1943	1941
C.N.O. & T.P. Ry	\$1.	859,009	\$4:	206,668	\$3,661,204	126.29
Southern Ry		232,779	36.	265,338	32,590,757	154.8
L. & N. RR		976.429		288,244	26,042,328	159.44
Illinois Cent		491,056		941,145	18, 195, 996	73.54
G.M. & O. RR		619,770		361,108	1,545,134	119.62
Tenn. Central		55,939		187,386	333,923	234.98
Clinchfield RR		58,032		87,422	104,179	50.64
W.C. & St.L. Ry.:		706, 194	.4	654.317	4.706,862	172.49
W.C. & Bt.D. Ry		100,101	.,	001,011	.1,100,002	11271
· Total	38	999,208	89,	991,628	87,180,383	130.75
		4			~ ~	
	7 mo.	.7 mo		7 mo		
Road	1941	1942		1943	1941	1942
C.N.O.T.P. Ry	\$1,107,995	\$1,804,	725	\$3,661,	204 230.44	102.87
Southern Ry	7,490,622	16.213.	483	32,590.	757 335.09	101.00
L. & N. RR	4,796,147	10.579.	521	26,042,	328, 442.98	146.16
Illinois Cent	6.334.978	9.788,		18, 195.		85.99
G.M. & O. RR	326,292	557		1.545.		177.38
Tenn. Central:	32,013	67.		333.		396.80
Clinchfield	32.794		038	104		166.87
N.C. & St.L.	979,892	1,824,		4,706.		157.99
8	010,002	.,001		2,100		
Total	\$21,100,733	\$40,873,	558	\$87,180,	383 '313.16	113.29

N.O.TP         Main- and tenance portation         Expenses tenance portation         Expenses tenance tenance portation         Expenses tenance t	lain- Trans- Main- nance portation Expenses tenance	. 1943
57.8 29.0 24.2 53.1 63.3 27.6 31.1 55.6 65.3 29.3 31.2 58.7 72.7 32.8 34.2 68.2 68.2 30.0 28.9 62.3 74.4 33.4 23.8 74.7 71.8 28.5 37.4 63.6	23.0 52.1	ain- Trans-
63.3 27.6 31.1 55.6 55.7 72.7 32.8 31.2 58.7 58.7 72.7 32.8 34.2 68.2 77.4 4 33.4 33.4 41.9 77.8 29.5 37.4 63.6	0.00	
29.3 31.2 58.7 32.8 34.2 68.2 33.0 28.9 67.1 71.7 19.0 18.4 63.6 63.6	26.8 52.0	
32.8 34.2 68.2 30.0 28.9 62.3 4 74.7 19.0 18.4 63.6 63.6 63.5 65.3 65.5 65.3 65.5 65.5	29.2 55.3	
30.0 28.9 62.3 33.4 74.7 19.0 18.4 41.9 63.6	29.2 . 66.6	
33.4 33.8 74.7 19.0 18.4 41.9 26.5 37.4 63.6	26.9 61.1	
19.0 18.4 41.9 26.5 37.4 63.6	32.5 67.7	
26.5 37.4 63.6	19.4 46.4	
	31.6 .61.7	
Passenger Revenues		
N.C. & St. I. Ry. Year 1941 81, 706, 194. Year-1941 55,939	3 mo. 1943\$	1,825,330

[fol. 616] At a Session of the Interstate Commerce Commission, Division 1, Held at Its Office in Washington, D. C., on the 13th Day of October, A. D. 1943

No. 29037

### Tennessee Intrastate Fares

#### ORDER INSTITUTING INVESTIGATION

It appearing, That a petition has been filed on behalf of the Alabama Great Southern Railroad Company and other common carriers by railroad operating in the State of Tennessee averring that in Ex Parte No. 148, Increased Railway Rates, Fares, and Charges, 1942, 248 I. C. C. 545, the Commission authorized certain increases in interstate rates, fares and charges throughout the United States, which have been established; that on August 1, 1942, the order therein was modified so as to authorize the railroads operating in southern passenger association territory to apply the increase of 10 percent approved in said order to a basic coach fare of 2 cents per mile on the lines of said railroads, pursuant to which authority fares for interstate transportation of 2.2 cents per mile for one-way travel in coaches were established on October 1, 1942; that on the latter date petitioners established, among others, fares for interstate transportation of 1.98 cents per mile for roundtrip travel in coaches and 2.75 cents per mile for roundtrip travel in sleeping or parlor cars; and that the Railroad and Public Utilities Commission of Tennessee by order dated August 30, 1943, refused to authorize or permit the application to the transportation of passengers traveling intrastate in Tennessee of fares and charges corresponding to those established for interstate application on October 1, 1942;

It further appearing, That petitioners allege that the refusal of the Railroad and Public Utilities Commission of Tennessee to permit the application to the transportation of passengers traveling intrastate in Tennessee of fares and charges corresponding to those established for interstate application on October 1, 1942, causes undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand,

and undue, easonable and unjust discrimination against interstate commerce;

And it further appearing, That said petition brings in issue fares and charges made or imposed by authority of the State of Tennessee:

It is ordered, That in response to said petition an investigation be, and it is hereby, instituted, and that a hearing be held therein for the purpose of receiving evidence from the respondents hereinafter designated and any other persons interested to determine whether the refusal of the Railroad and Public Utilities Commission of Tennessee to authorize or permit the application to the transportation of passengers traveling intrastate in Tennessee of [fols. 617-1075] fares and charges corresponding to those established for interstate application on October 1, 1942, causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and to determine what fares and charges, if any, or what maximum or minimum or maximum and minimum fares and charges, shall be prescribed to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

It is further ordered, That all common carriers by rail-road operating within the State of Tennessee subject to the jurisdiction of this Commission, be, and they are hereby, made gespondents to this proceeding; that a copy of this order be served upon each of said respondents; and that the State of Tennessee be potified of this proceeding by sending copies of this order and of said petition by registered mail to the Governor of said State and to the Railroad and Public Utilities Commission, of Tennessee at Nashville, Tenn.

It is further ordered, That notice of this proceeding be given the public by depositing a copy of this order in the office of the Secretary of the Commission, at Washington, D. C.

And it is further ordered, That this proceeding be assigned for hearing at a time and place hereafter to be named.

By the Commission, Division 1.

. W. P. Bartel, Secretary. (Seal.)

[fol. 1076] Before the Interstate Commerce Commission

## Docket No. 29037

### Tennessee Intrastate Fares

Petition on Behalf of the Railroad and Public Utilities Commission of the State of Tennessee for Reconsideration of the Commission's Report Decided March 25, 1944 and Served on the Parties on April 1, 1944—Filed April 26, 1944

[fol. 1077] Comes now the Railroad and Public Utilities Commission of the State of Tennessee, a protestant in the above styled proceeding, and respectfully requests the Commission, as provided in rule No. 101, of the General Rules of Practice before the Commission, to reopen same for the purpose of reconsidering and changing its findings and decision therein, and for cause states:

Specification of Error No. I. The petitioner herein specifies that the third specific finding and conclusion of the Commission, on sheet 20, is in error, said finding being unsupported by the evidence in the cause, and consequently any order based upon said finding would be unconstitutional. Said finding is in the following terms:

"The conditions affecting the one-way and round-trip transportation of passengers in coaches within [the State [fol. 1078] of Tennessee], and the round-trip transportation of passengers in sleeping and parlor cars within Tennessee, intrastate on the one hand, and interstate to, from, and through [said State] on the other, are substantially similar."

In lieu of the foregoing erroneous and incorrect finding, petitioner respectfully requests that the Commission make a substitute finding, as follows:

"Upon this record it appears that upon the average there is a substantial difference in the service and convenience accorded interstate passengers and that accorded intrastate passengers within the State of Tennessee, and that the services and conveniences accorded intrastate passengers are inferior to those accorded interstate passengers." The following portions of the record are relied upon to support this requested finding: Tr. pp. 258-268; Tr. pp. 231-241; Exhibit 11, pp. 7, 8, 9, 10, 11, 12, and 13; Exhibits 9 and 10; Tr. pp. 224-227.

Specification of Error No. 2. The petitioner herein specifies that the fourth specific finding and conclusion of the Commission, on Sheet 21, is erroneous and contrary to the proof and wholly at variance with the facts disclosed of record, and consequently any order based upon said finding would be unconstitutional. Said finding is in the following terms:

[fol. 1079] "Interstate passengers in [Tennessee] travel in the same trains and generally in the same cars with intrastate passengers, but are forced to pay higher ares than the intrastate passengers for like services, to the undue and unreasonable advantage and preference of the intrastate passengers and the undue and unreasonable disadvantage and prejudice of the interstate passengers."

Point No. 1. In lieu of the foregoing erroneous and incorrect finding, petitioner requests that the Commission make a substitute finding, as follows:

"All trains operated by respondent railroads are not available to interstate and intrastate passengers alike: interstate and intrastate passengers do not in all cases ride in the same trains nor in the same cars, and do not have the same facilities available to and used by both. The respondents provide four trains which operate through and within the State of Tennessee and make only one scheduled stop within the State, these being de luxe trains having the highest grade of service and facilities. On the other hand a considerable proportion of the service rendered within the state is wholly for intrastate passengers, such services being rendered in mixed trains; that is to say, trains consisting of a large number of freight cars with passenger service limited to a sub-standard, open-vestibule [fol. 1080] coach which is also used as quarters for the train crew in lieu of a caboose.

"Passenger trains are being operated through the State in many instances carrying more passengers than the seating capacity of the cars can accommodate and numerous passengers are having to stand. Relatively speaking, the interstate passengers travel considerable distances and the average interstate journey is much longer than the average intrastate journey. Passengers traveling long distances have more frequent opportunities under crowded train conditions to find seats as local passengers get on and off. The necessary inference to be drawn from these facts is that the ratio of intrastate standees to intrastate passengers per mile is higher than the ratio of interstate standees to to interstate passengers per mile."

The following portions of the record are relied upon to support this requested finding: Tr. pp. 258-268; Tr. pp. 231-241; Tr. pp. 224-227; Exhibits 9, 10, and 11.

Point No. 2. In the alternative, in lieu of the foregoing erroneous and incorrect finding, petitioner requests that the Commission make a substitute finding, as follows:

"No persons who pay the higher interstate fares and no localities have appeared herein to complain of undue [fol. 1081] advantage, preference, and prejudice, and as far as this record shows none have complained to respondents. Respondents do not seek relief for any particular persons or places, but seek a State-wide order. There is no evidence in this record to establish that the difference in interstate and intrastate passenger fares constitutes a source of undue disadvantage to one party and of undue advantage to any other party. There is no evidence in this record showing that any person who pays the interstate fares would be benefited by an increase in the intrastate fares. No locality in interstate commerce is shown to be injured by the disparity nor is it shown that any locality would be benefited by an increase in the intrastate fares."

No portions of the record are relied upon to support this statement as this statement is based upon a complete absence or lack of proof, rather than upon any affirmative proof in the record.

In support of its request for said substitute finding of fact and conclusion of law, the said petitioner cites the following decisions of the Interstate Commerce Commission and the Supreme Court of the United States:

Passenger Fares and Charges for Intrastate Traffic in Georgia, 214 I. C. C. 567.

[fol. 1082] Wisconsin Railroad Commission v. Chicago B. & Q. R. Company, 257 U. S. 563.

New York v. United States, 257 U. S. 591.

Barrett Company v. Atchison, T. & S. F. Ry. Company, 172 I. C. C. 319, 333 334.

Intrastate Class Rates in New Jersey, 203 I. C. C. 357.

Georgia Veneer and Package Company v. Atlantic Coast-line R. Company, 206 I. C. C. 566.

Anchor Storage Company v. Alton R. Company, 211 I. C. C. 307.

Basic Dolomite, Inc. v. Ann Arbor R. Company, 203 I. C. C. 378.

Utah Edible Livestock Rates and Charges, 206 I. C. C. 309.

Specification of Error No. 3. The petitioner herein specifies that the fifth specific finding and conclusion of the Commission, on sheet 21, is a wholly erroneous and improper finding inasmuch as there is no evidence in the record to support same, and consequently any order based upon said finding would be unconstitutional. Said finding is in the following terms:

"Respondents' revenues under the lower intrastate fares are less by at least \* \* \$525,000 in Tennessee than [fol. 1083] they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service."

In particular the last phrase of this finding is objected to, as there is no evidence in the record to the effect that traffic moving under the intrastate fares in Tennessee is not contributing its fair share of the net revenues required to enable the rail carriers to properly render an adequate and efficient transportation service.

Point No. 1. In lieu of the foregoing erroneous and incorrect finding, which was made by the Commission as above, petitioner respectfully requests that the Commission make a substitute finding, as follows:

"For the year ending September 30, 1943, the rate of return (before Federal income taxes) of the eight principal

respondents on their investment in railway property used in transportation service plus cash, materials and supplies was as follows:

"C. N. O. & T. P. Ry., 17.2 percent; Southern Ry. Co., 15.1 percent; Louisville and Nashville R. R., 15.7 percent; Illinois Central, 8.1 percent; Gulf, Mobile and Ohio, 10.6 [fol. 1084] percent; Tennessee Central Ry., 11.5 percent; N. C. & St. L. Ry., 12.4 percent; Carolina, Clinchfield and Ohio Ry., 8.5 percent. On the same basis the total rate of return for all eight of said carriers was 12.8 percent. During the year ending September 30, 1943, the carriers operating in Tennessee earned in excess of a fair return, and do not need the revenue from the requested increase of intrastate fares in order to enable them to earn a fair return."

The portion of the record which sustains said findings is as follows: Exhibit 15.

There is no evidence in the record to indicate that the revenues from the present intrastate passenger fares are less than those required to enable respondents to render adequate and efficient transportation service, or that there is any deficiency in respondents' revenues from their passenger and freight traffic considered as a whole.

The point to this objection is that the Commission has misconceived the meaning of the limitation to which 13th Section orders are subject, namely: that before the Commission can exercise the power and authority to set aside an intrastate rate because of the fact that such rate discriminates against interstate commerce, the facts in evidence in the record must sustain a showing that the carriers [fol. 1085] are not making an adequate return, and that by reason of the fact that such carriers are not making an adequate return the intrastate rates are not producing a fair proportionate share of the revenues of the carrier. There was no evidence in the present case upon which such a finding could have been predicated.

Point No. 2. As an additional substitute finding the petitioner requests the following:

"The evidence of record in this case is conclusive and undisputed that since 1941 both the average number of passenger cars in each passenger train and the average

number of passengers in each passenger car on the six major railroads operating in Tennessee have shown a large increase. The number of passenger cars per train has increased in 1942 over 1941 for the Southern Railway by 20 percent; for the Louisville and Nashville R. R. Co., by 11 percent; for the Tennessee Central, by 36 percent; and for the N. C. & St. L. Ry., by 10 percent; the average number of passengers in each passenger car have increased for the same period as follows: C. N. O. & T. P. Ry., 102 percent; Southern Failway Co., 71 percent; Louisville and Nashville R. R., 71 percent; Tennessee Central Ry., 140 percent; N. C. & St. L. Ry., 87 percent. This has resulted in a large increase in per car earnings for 1942 over those of 1941. The average revenue per passenger car mile in cents has increased as follows: For the C. N. O. & T. P. [fol. 1086] Ry., from 25 cents to 45 cents, or an increase of 85 percent; for the Southern Railway Co., from 29 cents to 46 cents, or an increase of 56 percent; for the Louisville and Nashville R. R., from 22 cents to 37 cents, or an increase of 65 percent; for the Illinois Central, from 23 cents to 34 cents, or an increase of 44 percent; for the Tennessee Central Ry., from 11 cents to 25 cents, or an increase of 116 percent; for the N. C. & St. L. Ry., from 21 cents to 37 cents, or an increase of 76 percent. For the entire Southern Region the first eight months of 1943 reflect a similar increase over 1942 as follows: The average revenue per passenger car mile in the Southern Region increased from 46 cents to 55 cents, or a 19 percent increase. In each instance above the earnings have been computed on the basis of 1.65 cents per passenger mile, the present intrastate fare in Tennessee, in order to show the increase, while the former average passenger car mile revenues used are based on the actual average revenues as shown in the reports of the carriers, and vary from 1.60 cents to 2.01 cents per mile, which latter figure is the average revenue per passenger mile for the entire Southern Region for 1942."

In support of its request for the foregoing substitute finding, the petitioner relies on the following portion of the record: Exhibit 11, pp. 3, 4, and 5.

[fol. 1087] Specification of Error No. 4. Said petitioner specifies that specific finding and conclusion number 6, sheet 21, is in error, and constitutes an incorrect and im-

proper finding, inasmuch as it is not supported by the facts of record in the case, and it is accordingly unconstitutional, as would be also any order pursuant thereto. The finding referred to is in the following terms:

"The maintenance of intrastate one-way and roundtrip coach fares in Tennessee, and of intrastate round-trip fares applicable in sleeping and parlor cars in · Tennessee, to the extent that such fares are on a lower level than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce; and this unlawfulness should be removed by increasing the aforesaid intrastate fares in the [State of : Tennesseel to the level of the corresponding interstate fares contemporaneously maintained by respondents to, from, and through such [State]; provided, that the aggregate charge made by any of respondents for the intrastate transportation in [such State] shall not exceed the aggregate charge made for like accommodations and for a like [fol. 1088] distance by the same respondent for interstate transportation to, from, or through such State."

Petitioner alleges that said finding is erroneous inasmuch as there is no evidence in the record to support such finding, whence said finding contravenes the Tenth Amendment to the Constitution of the United States, said Amendment being in the following terms:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

In support of said objection the petitioner also relies upon the following decision of the United States Supreme Court: St. Joseph Stockyards Company v. United States, 298 U. S. 38, 80 L. ed. 1033.

Specification of Error No. 5. The petitioner herein specifies that the following finding and conclusion of the Commission is in error, said finding being unsupported by the evidence in the cause, and consequently any order based upon said hading would be unconstitutional; said finding is on sheets 19 and 20, and is in the following terms:

"Upon the records in the instant proceedings we can find no warrant for changing our views that a basic coach fare of two cents per mile, plus an additional ten percent for the duration of the war, is reasonable for general application."

[fol. 1089] The petitioner further specifies that the following finding and conclusion of the Commission is in error, said finding being unsupported by the evidence in the cause, and consequently any order based upon said finding would be unconstitutional; said finding being on sheet 10, and in the following terms:

"The record does not warrant any modification of our conclusion in the report on further hearing in Ex Parte. No. 148 with respect to the passenger fares of these respondents."

Point, No. 1. The foregoing findings were made because of the fact that the Commission recognized the following prerequisite, which it stated in its order, on sheet 4, as follows:

"As a basis for a finding of violation of Section 13 (4) of the Act, the interstate fares must be shown to be reasonable."

Georgia Public Service Commission v. United States, 283 U. S. 765.

United States v. Louisiana, 290 U. S. 70.

Responsive to this prerequisite, the Commission considered the reasonableness of the interstate fares, and reached the conclusions set out above. However these conclusions were not founded nor grounded upon any evifol. 1090] dence in the record, as no evidence in the record was introduced by respondents, or by the protestants relative to the reasonableness of the interstate fares.

The manner in which the interstate fares were established is set out in the report on sheet 3 as follows:

"On July 14, 1942, the railroads operating in Southern territory filed with us a petition for authority to increase their lower fares for interstate one-way transportation in coaches in that territory to 2.2 cents a mile, the basis of the coach fares then in effect generally throughout the remainder of the United States. Having found in Passenger Fares and Surcharges, supra, that 2 cents per mile was a reasonable basic coach fare for application on railroads generally throughout the country, including the lines of petitioners, we authorized petitioners by our order of August 1, 1942, to apply the increase of 10 percent approved in Ex Parte No. 148 to a basic fare of 2 cents per mile, and modified accordingly the original order in the latter proceeding."

The method used by the Commission in increasing the basic interstate fares in the South to 2.2 cents per mile is improper, erroneous, and was made without due process of law. No hearing whatever was accorded any parties who might have wished to protest said increase in basic interstate fares.

[fol. 1091] A true, correct and exact statement of what happened is hereafter set out, and petitioner requests that the Commission make the following substitute finding:

"The basic fare of 1.5 cents per mile in the South was approved by the Commission on February 28, 1936, in its decision in Docket No. 26550, Passenger Fares and Surcharges, 214 I. C. C. 174. A 10 percent increase, bringing the fare to 1.65 cents per mile, was published by the carriers under authority of an order of the Commission dated January 21, 1942, confirmed by the decision in Ex Parte No. 148, Increased Railway Rates, Fares, and Charges, 1942, 248 I. C. C. 545. The Tennessee intrastate fare was increased by the petitioner Commission to the 1.65 cent level on February 10, 1942.

"The railroads in Southern Passenger Association territory on July 14, 1942, filed petition praying modification of the order in Docket No. 26550, seeking authority to increase Southern coach fares to 2.2 cents per mile. By order dated August 1, 1942, the Commission stated that the petition was denied. In the same order, however, the Commission granted the prayer of the petition in an order made under Ex Parte No. 148, modifying the former order in Ex Parte No. 148 by authorizing Southern carriers to apply the increase of 10 percent approved in said order to a basic fare of 2 cents per mile of said petitioners."

[fol. 1092] The procedure thus followed by the Commission is irregular, and does not partake of the dignity required of hearings under the Interstate Commerce Act. The fare was increased wholly without any evidence to support same, as such an increase was not in issue in that cause.

In the petition filed by all Class I Railroads in the United States in Ex Parte No. 148, the carriers did not pray for an increase of fares from 1,5 cents per mile to 2.2 cents per mile in or throughout the South. Instead the carriers specifically prayed for authority to make increases as follows: Passenger Fares, a uniform increase of 10 percent in all fares, as published in passenger tariffs. This petition in Ex Parte No. 148 was never modified, amended, nor changed by the carriers, and the authority granted on August 1, 1942, in that cause to increase fares in the South to 2.2 cents is accordingly illegal as this issue was not involved in that cause, nor did any parties have notice that such an increase was in issue.

Point No. 2. Ex Parte No. 148 was a cooperative procedure, by which is meant that representatives of the State Commission throughout the United States were invited to sit with the Commission, and consult with it upon the issues, findings, and conclusions to be incorporated in reports and orders. Said cooperative procedure was carried out under the cooperative agreement between the Interstate Commerce Commission and the National Association of sioners, under which all such cooperative proceedings are conducted.

The record in this case discloses that the cooperating State Commissioners were not called by the Interstate Commerce Commission when it entered its order of August 1, 1942, modifying its original order in Ex Parte No. 148, so as to permit the carriers operating throughout the South to apply the 10 percent increase to a basic fare of 2 cents per mile on the line of said railroads. Insteed of a 10 percent increase upon the existing published tariffs, carriers throughout the South were actually allowed an increase of seven-tenths of a cent per mile, or a 46.06 percent increase.

Said procedure of the Commission was made without pleadings on the part of the parties, without proof to sup-

port same, and with no opportunity on the part of protesting parties to resist same, and is accordingly illegal, and erroneous. It was also in violation of the cooperative agreement under which cooperative proceedings are conducted, and consequently any findings, conclusions, and orders based upon said action of the Commission are erroneous, and unconstitutional:

Specification of Error No. 6. The petitioner specifies that the failure of the Commission to make proper findings relative to the Wartime Stabilization Program, declared by and promulgated by the Leglislative and Executive Branches of the Federal Government, is in error.

[fol. 1094] Accordingly petitioner respectfully requests that the Commission make an additional or substitute finding, as follows:

"The Wartime Stabilization Program is based upon the policy set forth in the Emergency Price Control Act of 1942, 50 U. S. C. A. App. 901 et seq., and the Stabilization Act of October 2, 1942, 50 U. S. C. A. App. 961 et seq., Section 1 (961) of the latter Act sets forth the policy of Congress as follows:

"'Such stabilization shall so far as practicable be on the basis of the levels which existed on February 15, 1942. The President may thereafter provide for making adjustments to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities.'

Thereafter the President of the United States issued a Directive in which all regulatory agencies, including the petitioner Railroad and Public Utilities Commission of the State of Tennessee, were directed to allow no rate or fare increases unless the necessity for such increases be shown. In obedience to the statutes enacted and to the Directive of the President, the Railroad and Public Utilities Commission of the State of Tennessee refused to allow increases in the fares of the respondent railroads, which had failed to show any true necessity for such an adjustment. In the instant case the Tennessee railroads clearly do not need the added revenues from the increased intrastate fares."

[fol. 1095] The findings of the Commission in this case clearly show that the fare of 1.5 cents per mile was the

proper fare under the experiments made prior to the war, for a maximum fare which would create traffic during a peacetime period. The order of the Commission shows that a higher fare was not practical at such a time because of competition from motor carriers and privately operated automobiles. Accordingly, in allowing the railroads to increase their rates during wartime conditions, when the railroads do not need added revenues, to the same extent that they have needed them during peacetime, and when the lack of competition from motor vehicles makes the increases possible, the Tennessee Commission would have been allowing the railroads to make unreasonable profits by taking advantage of public or national need for transportation facilities during the war. The Emergency Price Control Act of 1942 expressly declared that prevention of such unreasonably high profits is in the interest of the national defense and security, and necessary to the effective prosecution of the war.

Under these circumstances the action of the Railroad and Public Utilities Commission of Tennessee was correct and the report of the Commission should be modified and the Commission's approval of the Tennessee Commission's action given.

Specification of Error No. 7. The petitioner herein specifies that the report and findings of the Commission are [fol. 1096] erroneous and improper, inasmuch as they fail to reflect the true state of the evidence and proof in the record, and fail to show that the respondent carriers are earning excess profits. Consequently any order based upon said report and findings would be unconstitutional.

The point to which this objection is directed is that the National Transportation Policy; as stated in the Interstate Commerce Act and particularly Section 15a (2) thereof should be read in the light of other Legislative acts which enunciate national policy. Legislation has been enacted which provides for excess profits taxes and this tax embodies a legislative pronouncement of national policy. The basic purpose of a tax on excess profits in wartime is to provide that as nearly as possible justice may be done to the entire citizenship, and that where extraordinarily large profits are made as a result of the war program, a large proportion of them (in fact between 80 and 90 percent) must be shared with the Nation as a whole. In its failure

to except railroads from the application of such excess profits taxes, the Congress made a declaration of national policy and wrote into The National Transportation Policy a declaration by inference, that the development and preservation of a national transportation system by rail, highway, and water does not require nor call for excessively high [fol. 1097] profits for the railroads during the period of war, as compared with the average earnings for the base period for the years from January 1, 1936, to January 1, 1940. This period is the base by which excessive profits are to be measured in order that excess profits taxes may

be imposed.

The record in the present case shows that for the base years referred to there were net railway operating deficits from the passenger operations of the eight principal respondents herein, these deficits being in the following amounts: 1936, deficit, \$19,290,859; 1937, deficit, \$17,838, 577; 1938, deficit, \$19,566,771; and 1939, deficit, \$19,972,298. Accordingly the average net railway operating dencit for these four base years was approximately \$19,167,126. The record also shows that the net railway income from passenger operations of these eight principal respondents for the year 1942 was \$11,802,470. Accordingly the record indicates that the excess profits derived from the war by these eight principal respondents are more than \$30,000,000. Under these circumstances any additional amount which the said carriers would derive as the result of an increase of intrastate fares would simply enhance these excessive earnings and unreasonable profits of the carriers.

The legislative pronouncement as to fair profits and fair returns in wartime is found in the Excess Profits Tax Act of 1942, and by this criterion the carriers in Tennessee [fol. 1098] are earning from their passenger operations far in excess of a fair and adequate return, and indeed are

- earning excessive profits.

Specification of Error No. 8. The petitioner herein specifies that the report, findings and conclusions of the Com-

mission are erroneous in the following respects:

The petitioner made the contention on the hearing that the added expense of operation of the respondents arising in connection with their movement of troop trains is interstate in nature, and that such increases in the cost of the interstate traffic may not properly be used to support a finding that intrastate traffic does not produce its fair share of the earnings required by respondent carriers to enable them to provide adequate and efficient railway transportation service.

The Commission ignored this contention, and the evidence introduced to support same. However, as to the same contentions made by the Alabama Commission in the companion Alabama case, which is treated in the same report and findings, the Commission made the following finding, conclusion, and statement on sheet 15:

"Protestant points out that much of the added expense of the operations of some of respondents arises in connection with or is due to the movement of troop trains, and that these are interstate movements; and it contends that civilian intrastate fares should not be increased to assist in bearing that burden. To concede the correctness of this [fol. 1099] contention might be to impair the effectiveness of the provisions of section 15a relative to adequate and efficient railway service, and to defeat the national transportation policy as declared in 54 Stat. L. 899, relative to developing, coordinating, and preserving a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense, and requiring that all of the provisions of the Interstate Commerce Act shall be administered and enforced with a view to carrying out the stated declaration of policy."

foregoing finding is accepted as the finding Commission would apply to the same contention in Tennessee and petitioner specifies that this finding is erroneous and not supported by the law and facts, and accordingly any order based upon said finding would be unconstitutional and in violation of the Tenth Amendment to the Constitution of the United States. It is necessary before the Interstate Commerce Commission can act to set aside intrastate rates as a burden upon interstate commerce, that a finding must be made, supported by the record, that these rates do not contribute their fair share of the cost of rendering adequate and efficient transportation service. The record in this case discloses how-ever that the expense of transportation service is high at present because of the large expense of rendering the

inferstate troop train service; accordingly this is not a part of the expense which can be charged lawfully to the fair share of intrastate expense.

[fol. 1100] The Commission made the following findings on sheets 8 and 9 as to increased expenses due to movement

of troop trains:

"Wartime operations have placed added burdens on the passenger departments and facilities of respondents and resulted in unusual expenses, such as for safeguarding operations and providing expedited movements of troop trains. For example, during November 1943, the Southern operated 353 troop trains, and 1,178 cars with troops were operated by it in regular trains. A special representative of the railroad rides each troop train. Much dead-head movement of equipment is necessary in assembling cars for these troop movements and in returning them to the points where they will again be needed, and additional terminal switching costs are incurred. Troop movements are given preference over all freight trains and certain passenger trains, and this occasions delays to freight and passengers trains, with resulting increased costs in wages and fuel therefor. Some of these expenses are reflected in the freight accounts of respondents. Their general offices must be kept open in some instances 24 hours a day and in others from 12 to 16 hours in order to make provision for troop movements, thus requiring the services of a greater number of employees and resulting in increased expenses. On troop movements the Government does not pay the full published fare, but is allow a discount of 5 percent from commercial fares, except where the movement is by a route over which land-grant deductions are applicable, in which event the deduction allowed is 50 percent of the commercial fare, plus a further deduction of 3 percent. There is no land-[fol. 1101] grant mileage in North Carolina, Kentucky, or Tennessee, but there is considerable such mileage in Alabama."

The record in the cause sustains the fact that such increased expenses have been incurred, and also shows that the entire movement of troop trains in Tennessee was interstate, there being virtually no intrastate movement of troop trains within the State. The portion of the record relied upon to establish this fact is as follows: Tr. pp. 287, 288.

For the foregoing reasons all of such increased expense is properly chargeable to interstate operations, and intrastate operation should not be burdened by this additional expense as this is not a part of their fair share of the earnings required by the respondent carriers to enable them to provide adequate and efficient railway transportation service, both interstate and intrastate.

Specification of Error No. 9. The petitioner herein specifies that the following finding of the Commission, on sheet 13, is in error, said finding being unsupported by the evidence in the cause, and consequently any order based upon said finding would be unconstitutional:

"Respondents in [Tennessee] are engaged in the handling of both intrastate and interstate passengers. Such passengers are carried on the same trains and generally in the same cars, but the interstate passengers have to pay higher [fol. 1102] fares than the intrastate passengers for corresponding distances."

The petitioner also specifies that the following finding on said sheet 13 is likewise in error, said finding being unsupported by the evidence in the cause, and consequently any order based upon said finding would be unconstitutional:

"All trains operated by respondents in [Tennessee] are available to and are used by both interstate and intrastate passengers, and the services accorded to both classes of passengers are substantially the same."

The petitioner herein further specifies that the following finding of the Commission, on sheet 20, is in error, said finding being unsupported by the evidence in the cause, and consequently any order based upon the said finding would be unconstitutional:

"Both intrastate and interstate passengers travel side by side under substantially similar circumstances and conditions on practically every passenger car on every branch and main-line operated by respondents in [Tennessee]."

These three findings are essentially identical, although they are separated and repeated at three or more points in the report of the Commission. For that reason they are here grouped in one specification of error. The true state of the record with reference to this particular finding is sufficiently [fol. 1103] set out hereinabove under Specification of Error No. 1, and the portions of the record relied upon to show that said finding is incorrect, erroneous and contrary to the

evidence and proof are also there stated.

In all of the foregoing respects the report, findings, and conclusions of the Interstate Commerce Commission violate the Tenth Amendment of the United States Constitution, in that they invade powers reserved to the State of Tennessee to regulate intrastate commerce, and to create on proper conditions, control and regulation of corporations doing business in the State of Tennessee.

Dated at Nashville, Tennessee, April 24, 1944.

Respectfully submitted, Railroad and Public Utilities Commission of the State of Tennessee. By Leon Jourolmon, Jr., Commissioner and Counsel.

[fol. 1104] Certificate of Service

I hereby certify that I have served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Nashville, Tennessee, this 24th day of April,

1944.

Leon Jourolmon, Jr. Counsel.

[fol. 1105] Before the Interstate Commerce Commission

Docket No. 28963

Alabama Intrastate Fares

Docket No. 29000

Kentucky Intrastate Fares

Docket No. 29036

North Carolina Intrastate Coach Fares

Docket No. 29037

Tennessee Intrastate Fares

Petition of the Price Administrator for Reconsideration
—Filed April 26, 1944

Cones now the Price Administrator, Intervenor in these proceedings, on his own behalf and on behalf of the Economic Stabilization Director, and petitions the Interstate

Commerce Commission to reconsider its decision of March 25, 1944, for the following reasons:

[fol. 1106] (A) The Interstate Commerce Commission has arbitrarily permitted the railroads of the Southern region to obtain unreasonably high prefits by taking undue advantage of wartime conditions to make abnormal increases of coach fares above the level found practicable during peacetimes.

- (B) The decision of the Interstate Commerce Commission is an unlawful violation of the reserved constitutional rights and powers of the States of Alabama, Kentucky, North Carolina, and Tennessee, and of the delegated powers of the Alabama Public Service Commission, the Kentucky Railroads Commission, the North Carolina Utilities Commission, and the Tennessee Railroad and Public Utilities Commission.
- (C) Neither the facts of record nor the Commission's findings of basic facts afford any substantial support for the ultimate findings and conclusion that the interstate fares are reasonable.
- (D) The Commission erred, as a matter of law and contrary to its own assurances, by failing and refusing to give due consideration to wartime stabilization policy enacted by Congress in Section 1 of the Stabilization Act of October 2, 1942.
- (E) The Commission's decision is an unwarranted interference with the cooperation between the President of the United States and the State Commissions in the efforts of the latter to aid in the effective prosecution of the war, as requested of them by the President.

# [fol. 1107] • I. ARGUMENT

A. The Interstate Commerce Commission Has Arbitrarily Permitted the Railroads of the Southern Region to Obtain Unreasonably High Profits by Taking Undue Advantage of Wartime Conditions to Make Abnormal Increases of Coach Fares Above the Level Found Practicable During Peacetimes.

Intervener respectfully submits that Respondents' own evidence shows that the increase of coach fares from 1.65

to 2.2 cents per mile was not practicable in peacetimes; and that the records in these four cases conclusively show that the increases were and are not necessary for Respondents, but enable them to profit from inflationary wartime conditions which make the increases possible.

To properly understand the situation, one must know the background of the fares.

In 1936 the Interstate Commerce Commission established a maximum fare, for the country as a whole, of 2 cents per mile in coaches, although it found that in 1933 the cost of the services was 2.73 cents per mile for the country, and 3.25 cents per mile in the Southern District. See Passenger Fares and Surcharges, 214 I. C. C. 174, 180, 266. The Commission justified a maximum fare which would inevitably produce deficits upon two principal grounds: (1) The Comfol. 1108] mission pointed out (214 I. C. C. 225-228) that freight rates had been established at a level which would support the passenger service. (2) The Commission con-

With respect to the Southern railroads the Commission outlined the issues from a factual viewpoint as follows (214 I. C. C. 200-201): "What respondents are all seeking is a reasonable fare basis which will produce the greatest amount of revenue. The day when an increase in basic fare was quite certain to produce a corresponding increase in revenue is gone, and it would seem from the record that it may have been even before the general increase of 1920. The problem for this respondent and its southern competitors is, what reasonable fare basis will meet with greatest revenue response from the public?"

<sup>&</sup>lt;sup>2</sup> In Fifteen Percent Case, 1937-1938, 226 I. C. C. 41, the Commission authorized the railroads of the country to make a 10 percent increase in freight rates, and said (p. 54):

This deficit in the passenger traffic as a whole has continued from at least 1926, mounting steadily to a peak in 1932, and receding only slightly thereafter. Passenger Fares and Surcharges, 214 I. C. C. 174, 182. The interrelation of the freight and passenger traffic has often been commented on by us, and we have declined to the proposition again repeated here by certain protestants that we can authorize no increase in freight

cluded that the 2 cent fares for the country as a whole would produce the greatest total revenues, although deficits would occur. With respect to Southern carriers the Commission found (214 I. C. 255):

There is doubt whether at least in the southern district a coach fare of 1.5 cents per mile is not producing better revenue results for those respondents than would any higher fare, and it may also be that round-trip fares on both coach and pullman traffic at a lower rate per mile than the one-way fares herein prescribed would bring to respondents better revenue results than the higher fares. These matters are left to the discretion of respondents.

As stated in the Commission's report (sheets 2 and 5), need for the low fares was due to competition from automobiles and motor busses. In all of the records Respondents' [fol. 1109] witnesses admitted this fact. Whatever doubt there may have been as to the revenues possibilities of the 2 cent fares in the South has been removed by the records in these proceedings, for the Southern railroads did try the higher fares for the fourteen months, beginning Novem-

rates to correct deficiencies in aggregate earnings growing out of the inability of the passenger business to meet its full share of the revenue burden. Revenues in Western District, 113 I. C. C. 3, 22-23; Fifteen Percent Case, 1931, 178 I. C. C. 539, 565; compare General Commodity Rate Increases, 1937, supra.

Kentucky record, Tr. p. 8.

Tennessee record, Tr. pp. 11, 171-172.

<sup>&</sup>lt;sup>3</sup> Alabama record, Tr. pp. 11, 98.

North Carolina record, Exhibit 1, "page 2", and Tr. p. 58-60.

In Passenger Fares and Surcharges, supra, the Commission said: "In the latter year (1920) the average intercity travel of every inhabitant of the country was about 500 miles. In 1929 it was about 2,000 miles, and in 1933, about 1,700 miles, only 130 miles of which were by rail. During the same period the average annual per capita travel by rail dropped from 448 miles in 1920 to 256 miles in 1929 and 130 miles in 1933." (2f4 1. C. C. 183.)

ber 15, 1937. Their conclusion at the end of that trial was that the lower fare produced greater total revenues. This fact was not only admitted in the testimony of Respondents' witnesses, but is also shown by Respondents' exhibits from which the following data has been taken. Note the drop in unit revenues in 1938, with the lag in recovery extending into 1939.

. 13 A	labama	Rai	Iron	ds	
Docket	28963,	Ex.	17,	p.	10

7 Kentucky Railroads Docket 29000, Ex. 6, pp. 14 & 16

	Passe	Revenue nger Carry Car Mile		Revenue per Pass. Mile In Coaches	Revenue per Coach Mile
1937 1938 1939		15.72 14.65 14.56	1937 1938 1939	1.517¢ 1.772 1.482	23.65¢ 21.85 21.12
1940 1941 1942		15.41 19.95 36.54	1940 1941 1942	1 .437 1 .506 1 .686	22.66 29.41 52.02

[fol. 1110]

11 Tennessee Railroads Docket 29037, Ex. 6, pp. 14 & 16 6 North Carolina Railroads Docket 29036, Ex. 9, pp. 15 & 17

P		nue per h Mile	Revenue pe Pass, Mile in Coache	Revenue per
1937 1938 1939 1940 1941 1942	1.774 19 1.477 19 1.446 29 1.515 29	$\begin{array}{cccccccccccccccccccccccccccccccccccc$	1.806 1.395 1.362 1.403	22.02¢ 19.51 20.17 23.30 30.93 52.44

In March, 1942, the Commission authorized increases of 6 percent in freight rates and 10 percent in passenger fares, primarily because of increased wage expenses. See *Increases Railway Rates, Fares, and Charges, 1942, 248* I. C. C. 545. The State Commissions also authorized these increases, bringing the Southern interstate and intrastate coach fares to the level of 1.65 cents per mile.

Changed conditions resulting from the war, including, as we all know, limitations upon the use of automobiles and

Alabama record, Tr. pp. 17, 98-99.

Kentucky record, Tr. pp. 16, 46-47.

North Carolina record, Tr. p. 60.

Tennessee record, Tr. pp. 20-21, 173.

increased spending powers, made the increase of Southern coach fares practicable.<sup>5</sup>

[fol. 1111] On August 1, 1942, the Commission authorized increases of Southern coach fares to 2.2 cents per mile; these increases were published to become effective October 1, 1942.

"Because of the abnormal conditions which now prevail throughout the country, we are of the opinion that the increased fares proposed will yield substantial amounts of additional revenues "." (Emphasis added.)

6 On July 14, 1942, the rail carriers in Southern Passenger Association territory filed a petition with the Commission for modification of the order in Passenger Fares and Surcharges, supra, seeking authority to increase coach fares in Southern territory to 2.2 cents per mile. On August 1. 1942, the Commission issued an order without prior hearing or report, stating that the petition of the rail carriers was denied; but the order was issued also under Increased Railway Rates, Fares, and Charges, 1942 modifying the order in the latter proceeding by authorizing the railroads "to apply the increase of 10 percent approved in said order to a basic fare of 2 cents per mile." The railroads did not notify the Price Administrator of the proposal authorized by the Commission on August 1, 1942, but it was discovered in sufficient time so that the Price Administrator was able to protest the increases published in the carriers' tariff to become effective October 1, 1942. As stated in its report herein, the Commission refused to suspend the rates or to enter upon an investigation to determine the reasonableness thereof.

In October 1942 the Southern railroads followed prescribed procedures to increase intrastate fares to the interstate level. The increases were denied by the Alabama Public Utilities Service Commission, the Railroad Commission of Kentucky, and the Tennessee Railroad and Public Utilities Commission. The North Carolina Utilities Commission has not denied the increases, but deferred action and filed a petition with the Interstate Commerce Commission.

<sup>&</sup>lt;sup>5</sup> See sheet 5 of the Commission's report. In *Increased Railway Rates, Fares, and Charges, 1942, 248 I. C. C. 545, 565, the Commission said:* 

[fol. 1112] By decision of April 6, 1943, in Increased Railway Rates, Fares and Charges, 1942, 255 I. C. C. 357, the Interstate Commerce Commission found that the freight rate increases were not necessary, and ordered their suspension. The passenger fare increases were allowed to remain, however, for reasons stated by the Commission as follows (255 I. C. C. 394):

The situation regarding standard passenger fares differs from that as to freight rates and charges in important respects. As we have previously shown, the evidence herein discloses that passenger traffic failed for many successive years to pay its proper share of railway expenses, and that only with the large volume of traffic and passenger revenue was the 1942 passenger deficit currently eliminated. Even with that increased volume of traffic and revenue, as shown by the reports for 1942 and the current reports so far made this year, the operating ratio remains decide-ly less favorable for passenger and allied services than for freight.

At about the time the Commission made the above quoted statements, there were in progress phenomenal increases in passenger traffic, which in the South were undoubtedly due to the large number of military camps and establishments. At the hearings in the Kentucky, Tennessee, and North Carolina cases, Intervenor submitted testimony and exhibits showing that this change had become so great that passenger operating ratios had become as favorable as the

sion on July 8, 1943, seeking an investigation by the latter into the reasonableness of interstate passenger coach fares to, from, and within the State of North Carolina. Petitions were then filed by the Price Administrator on July 13, 1943, and by the Alabama Public Service Commission, seeking an investigation into the reasonableness of interstate coach fares in the Southern Region generally. These petitions directed the Commission's attention to the phenomenal and favorable changes in passenger traffic and revenues; but the petitions were denied, without hearing, by a divided vote of the Commission. The North Carolina Utilities Commission has never closed its doors to continuance to its proceeding, which has been interrupted by this proceeding before the Interstate Commerce Commission.

freight operating ratios. From the monthly reports and the 1943 annual reports of Respondents filed with the Commission. Intervenor has computed operating ratios for 17 Class (fol. 1113) I Respondents in these proceedings. for the year 1943 the freight service operating ratio was 58.9 percent as compared with a passenger ratio of 57.3 percent.

With such extraordinarily favorable operating ratios, the resulting favorable financial position of Respondents is unavoidable. In Appendix B to this Petition, Intervener has set forth computations of the rates of return for 10 Class 1 Respondents for the year 1943. Before deductions of federal income taxes, this rate of return for all 17 railroads was 16.8 percent on Intervener's depreciated base, and 12.8 percent on Respondents' undepreciated base.

The Commission and the Courts have held that depreciation should be deducted from the rate base. See Charges for Protective Service To Perishable Freight, 215 I. C. C. Knoxville v. Knoxville Water Co., 212 U. S. 1, 10: Minitesota Rate Cases, 230 U. S. 352, 457-458. Angeles Gas & Electric Corp. v. California R. Comm., 289 U. S. 287, 312. Power Commission v. Hope Gas Co. 320 U. S. 591. Note that Exhibits 16 and 20 (p. 8) of the Tennessee and North Carolina records, respectively, show that Respondents' rate base for Class I railroads in the Southern Region was 130:1 percent of the final value found by the Commission in the Fifteen Percent Case, 1937-1938, 226 I. C. C. 41, 161, while Intervener's base would have been 93.1

percent of the final value.

<sup>&</sup>lt;sup>7</sup> See Appendix to this Petition. An operating ratio is the percentage of operating expenses to operating revenues. Because all of the 17 railroads have not filed their annual reports for 1943, the passenger expenses for them have been estimated according to the formula explained in Intervenor's Exhibits 16, 20 (p. 5), and 13 in the Kentucky, North Carolina, and Tennessee records, respectively. The actual operating ratios for 1936 to 1942, in the four proceedings, and the estimates for parts of 1943, made by Intervenor's witness in the three-proceedings, are set forth on page 3 of Appendix to this Petition. A comparison of the estimates with the actual reports to the Commission for 7 of the 17 railroads is set forth on page 2 of Appendix hereto. Note the conservativeness of the results from the formula, which was not challenged by Respondents either on cross-examination, on brief, or at oral argument.

After deduction of all taxes, the rate of return was 7.4 percent on Intervener's depreciated base, and 5.8 percent on Respondents' undepreciated base.

[fol. 1114] In the Alabama record, Respondents' Exhibit 17 (page 19) shows that the 1942 rate of return, after all taxes on its undepreciated base was 6.41 percent for Class I carriers in the Southern Region.

There is more available data in the Kentucky record. As pointed out in Intervener's brief? and Exceptions, the rate of return, for 7 Kentucky Respondents, on Respondents' undepreciated base was 12.78 percent before deduction of Federal income taxes, and 6.60 percent after taxes, for the 12 months ended June 30, 1943. Upon Intervener's depreciated base the rates of return were 18.11 before deduction of Federal income taxes and 9.35 percent after taxes, for the same period. The Railroad Commission of Kentucky estimated the rate of return before Federal income taxes for the full year 1943 as 17.96 percent.

In the North Carolina record, Intervener's Exhibit 20, page 6, shows a rate of return for 7 North Carolina railroads, before Federal income taxes, of 14.7 percent on Respondents' undepreciated base and of 18 percent of Intervener's depreciated base for the 12 months ended October 31, 1943.

In the Tennessee record Intervener's Exhibit 15 shows a rate of return for 8 Tennessee Respondents', before Fed-[fol. 1115] eral income taxes, of 12.8 percent on Respondents' undepreciated base and 18.8 percent on Intervener's depreciated base for the 12 months ended September 30, 1943.

From the above facts, Intervener draws the following conclusions:

- (1) The passenger service is now more profitable with freight service, even though the freight revenues are swelled by the passenger service support factor in freight rates. This fact is shown by the operating ratios.
- (2) If rates of return are calculated prior to Federal income taxes, Respondents are undoubtedly earning far

The computations (page 25 of brief) were based on Exhibit 9, sheet 5; Exhibit 12; Exhibit 17; and first 7 pages of Exhibit 19. The estimate of the Kentucky Railroad Commission is set in Exhibit 10.

more than a fair rate of return, regardless of the rate base which may be used in calculations. The Commission has stated that rates of return should be determined prior to deduction of such taxes, because "railway corporations should, like other corporations, pay their Federal income taxes out of the income, rather than collect it, in effect, from the public in the form of transportation charges adjusted to enable it (them) to retain the designated fair return over and above the tax." Reduced Rates, 1922, 68 I. C. C. 676, 683; Increased Railway Rates, Fares, and Charges, 1942, 248 I. C. C. 545, 556. Intervener concurs in this rule, and contends that Respondents' fair rates of return should be computed upon the basis of their paying a fair share of wartime taxes from their net income.

- (3) Authorizing Respondents to increase coach fares on October 1, 1942, and at the same time permitting them to [fol, 1116] profit from the support factor in freight rates multiplied by the increase in freight traffic, has resulted in unreasonably high profits for Respondents.
- (4) The increase of rates from 1.5 to 2 cents per mile was found by Respondents as not practicable during peacetimes, because of the resulting drop in total passenger revenues. The increase of revenues is now possible only because of wartime conditions resulting from decreased use of automobiles; this fact is admitted by Respondents and stated as fact in the Commission's report.

Therefore, by its decision in these proceedings, the Interstate Commerce Commission has arbitrarily and capriciously disregarded the undisputed facts, and has permitted the railroad of the Southern region to obtain unreasonably high profits by taking undue advantage of wartime conditions to make abnormal increases of coach fares above the level found practicable during peacetime.

B. The decision of the Interstate Commerce Commission is an unlawful violation of the reserved constitutional rights and powers of the States of Alabama, Kentucky, North Carolina, and Tennessee, and of the delegated powers of the Alabama Public Service Commission, the Kentucky Railroad Commission, the North Carolina Utilities Commission, and the Tennessee Railroad and Public Utilities Commission.

Because of the rights reserved to the States by the United States Constitution, the powers of the Federal government do not extend to regulation of intrastate commerce, [fol. 1117] unless the conduct of intrastate commerce unduly burdens or injures interstate commerce. This is the doctrine of the so-called Shreveport case, Houston, E. & W. T. R. Co. v. United States (1913) 234 U. S. 342. Section 13(4) of the Interstate Commerce Act expressly provides that the jurisdiction of the Interstate Commerce Commission to prescribe intrastate rates and fares is dependent upon a finding that such rate or fare "causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue; unreasonable or unjust discrimimation against interstate or foreign comperce." (Emphasis added.)

In that portion of the report entitled "Undue advantage, preference, or prejudice" (sheet 13), the commission sets forth illustrations of different fares, saying: "all are based upon the fact that the interstate fares are made on the basis of 2.2 cents per mile, while the intrastate fares are based on 1.65 cents per mile." The report then states that the same train services are substantially the same and available to and used by both interstate and intrastate

passengers.10

The facts stated by the Commission in this portion of its report may show advantage, preference, and prejudice [rel. 1118] as between persons and localities; but are such advantages, preference, and prejudice undue or unrea-

sonable?

The Commission and the Courts have held that disparity between rates and fares does not in itself cause undue or unreasonable advantages preference, or prejudice. This fact is pointed out in the dissent of Commissioners Splawn, Aitchison, and Mahaffie who cited Florida v. United States (1933) 282 U.S. 194, in which the United States Supreme Court said:

The Commission has no general authority to regulate intrastate rates, and the mere existence of a disparity

<sup>1</sup>º Intervener does not admit that this last statement is true. The petitions of the States will undoubtedly cover this point in detail.

\*between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates. (282 U. S.-212; emphasis added.)

As also pointed but by the dissenting Commissioners, there must be a showing of additional facts which would warrant a conclusion that the disparity caused something which is undue or unreasonable as, for example, adverse affects upon competition between businesses located in border cities. Railroad Comm. of Wisconsin v. Chicago B. & Q. R. Co. 257 U. S. 563. See also Passenger Fares and Charges in Georgia (1936) 214 I. C. C. 567. In other words, unless there is a showing of injury or adverse effect upon interstate commerce, there is no Federal jurisdiction. No facts showing adverse effects or injury to persons or localities are in this record, nor stated in the Commission's report.

In that part of the report labeled "Unjust discrimination" the Commission estimates the amounts which Re[fol. 1119] spondents would have received if the proposed interstate fares were in effect. The remainder of this part of the report then discusses the possibility of defeating interstate fares by purchasing intrastate tickets in combination with interstate tickets.

The infirmities of the evidence are apparent from the Commission's admission that the record does not show any particular instances in which interstate fares were defeated. Respondents' witnesses believed that such was the case, but the evidence was admittedly hearsay, and objected to as such. The Commission's findings, if such they be, are, therefore, based on hearsay. In 13th section proceedings the "preference, prejudice, and discrimination must be real and substantial and proved by convincing evidence." Passenger Fares and Surcharges in Georgia, supra, (214 I. C. C. 576; emphasis added). Hearsay evidence did not satisfy this requirement in Fertilizers and Fertilizer Materials in Mississippi 191 I. C. C. 413, 421-422.

But even if interstate fares were being defeated, as suggested by the Commission, this evidence is of little importance, since, to the extent that passengers are engaging in such a practice, the effect is necessarily fully reflected in the estimates of revenues which would have been received if the intrastate fares were 2.2 cents per mile.

Of greater importance, however, is the fact that section 13(4) does not forbid discrimination between persons and

localities. Only discrimination against interstate or [fol. 1120] foreign commerce is forbidden. This distinction is pointed out in Florida v. United States, supra, as follows:

In dealing with unjust discrimination as between persons and localities in relation to interstate commerce, the question is one of the relation of rates to each other. In considering the authority of the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of rates to income. (282 U.S. 214; emphasis added.)

In this same case, the United States Supreme Court said:

As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective program of the act requires that intrastate traffic should pay "a fair proportionate share" of the cost of maintenance. (282 U. S. 211; emphasis added.)

That decision was made under section 15a enacted in the Transportation Act of 1920, which contained the so-called "recapture clause" with respect to railroad earnings above a fair rate of return. Upon repeal of the recapture provisions in 1933, the present section 15a(2) as amended in 1940, was enacted. In Florida v. United States (1934) 292 U. S. 1, query was raised as to the effect of the statutory change upon the "dove-tail" relation with section 13(4). The dourt held, that there was no change in the previous rule, which it stated as follows (p. 5):

We concluded that these words in section 13(4), were not tautological, but had the necessary effect of conferring authority upon the Commission to raise intrastate rates so that intrastate traffic may produce its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on [fol. 1121] the value of the property devoted to the transportation service, both interstate and intrastate. United States v. Louisiana, 290 U. S. 70. (Emphasis added.)

From these excerpts from opinions of the Supreme Court, the conclusion is apparent that the Commission has completely misconceived its duty with respect to findings of fact necessary to show the unjust discrimination forbidden by section 13(4). The Commission has based its decision upon discrimination against persons or localities. Discrimination in interstate commerce between persons and localities may be in violation of section 3 of the Act, but the Commission has no such jurisdiction over intrastate commerce. The discrimination forbidden by section 13(4) is against interstate commerce as a whole, i.e., with respect to the revenues of the carriers.

In its report, the Commission does not even attempt to determine whether the level of intrastate rates will prevent Respondents from making a fair rate of return, although evidence and contentions of the parties in this respect involved one of the principal issues in these cases, as indicated by the foregoing part of this Argument.<sup>11</sup>

The Commission's report shows on its face that Respondents' passenger services have been profitable beginning in 1942, and hence there is no question but that costs [fol. 1122] of maintenance and operations are being met, despite the increased expenses of increased traffic which is producing increased revenues. Upon what finding of fact, therefore, can the Commission have based its conclusion in Finding 5, that Respondents require added revenues?

The importance given in the report to the passenger deficits prior to 1942, indicates that the Commission has reached the conclusion that it should require increases of intrastate fares so that carriers may recoup for past losses. If such facts are the basis of the decision, a matter of extremely great importance is involved.

Whether or not the Commission has the discretionary power to increase interstate fares during wartime to compensate for peacetime losses, the fact is clear that the railroads are not absolutely entitled to such recoupment from

-

<sup>&</sup>lt;sup>11</sup> Rates of return are mentioned in the report with respect to the Kentucky respondents, but the infirmities of this inflated base are pointed out on pages of this petition and in the dissenting report. Note that the Commission did not find that such a rate of return was "fair."

intrastate fares. The United States Supreme Court has held that "regulation does not insure that the business shall produce net revenues, nor does the Constitution require that the losses of the business in one year shall be restored from future earnings "" Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 U. S. 575, 590. See also Power Comm'n v. Hope Gas Co. (1944) 320 U. S. 591, 603; Galveston Electric Co. v. Galveston, 258 U. S. 388; Georgia Ry. & Power Co. v. Railroad Commis of Georgia, 262 U. S. 625, 632.

Also ignored by the Commission is the fact that during the years of passenger deficits, these losses were compensation. 1123] sated from a support factor in the right rates, 12 and this compensation was not included in the amounts set forth in the Commission's report. Furthermore, now that the passenger service is returning profits from its own fares, this unnecessary support is continuing, and has been multiplied by the great increase in volume of freight traffic.

Inherent in the Commission's decision, therefore, is the question whether it has jurisdiction under section 13(4) of the Interstate Commerce Act to increase intrastate rates and fares for the purpose of increasing carriers revenues above the minimum required by the Constitution and section 15a(2) of the Interstate Commerce Act. The Constitution requires only a fair return to the carrier sufficient to care for the interests of investors. Power Comm'n v. Hope Gas Co., supra. There is nothing in Section 15a(2) specifically requiring even less than a fair return; it requires only "revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such (adequate and efficient transportation) service."

There is no question but that the passenger service has in itself been profitable beginning in 1942; the Commission's report clearly shows that fact. Not having determined whether this profit is less or more than a fair rate of return, as contended by the parties, the Commission has [fol. 1124] obviously decided that Respondents are entitled to recoup for passenger services deficits prior to 1942, even though these deficits were compensated from a support

<sup>&</sup>lt;sup>12</sup> See Passenger Fares and Surcharges, supra, and Fifteen Percent Case, 1937-1938, supra. Note the discussion of these cases on page 4 of this petition.

factor in the freight rate. Intervener respectfully submits, therefore, that such a decision goes far beyond the requirements of Section 13(4), which contemplates merely the removal of unjust discrimination, not reparation for supposed losses during years when there could have been no unjust discrimination because both interstate and intrastate fares were on the same level when the deficits were incurred. Cf. Atlantic Coast Line R. Co. v. Florida, 295 U. S. 301.

In considering the report in these proceedings as a whole, therefore, one must conclude that the majority of the Interstate Commerce Commission merely has a difference of opinion with the States as to the reasonableness of the remuneration from interstate and intrastate fares. Obviously, in acting on such a basis the Commission has gone beyond the scope of its statutory jurisdiction. In Florida v. United States, supra, the United States Supreme Court said (282 II. S. 214):

But to justify the Commission in the alteration of intrastate rates, it was not enough for the Commission to find that the existing intrastate raes on the particular traffic were not remunerative or reasonably compensatory. The authority to determine the reasonableness per se of interastate rates lay with the state authorities and not with the Interstate Commerce Commission.

In this respect the Commission should follow its own rule, as stated in Passenger Fares and Charges in Georgia, supra (214 I.C.C. 576):

[fol. 1125] The authority to determine the reasonableness per se of intrastate rates or fares rests exclusively with the State authorities. Our power to prescribe them is incidental to the regulation of interstate commerce, and it is not enough for us merely to find that they are not remunerative or reasonably compensatory.

Intervener respectfully submits that the Commission's decision is in violation of section 13(4) of the Interstate Commerce Act, because its finding of undue and unreusonable advantage, preference, or prejudice is based entirely upon the "mere existence of a disparity" between the interstate and intrastate fares; and because its finding of

unjust discrimination against interstate commerce is based upon erroneous considerations with respect to discrimination against persons rather than interstate commerce, and upon the erroneous principle that intrastate fares may be increased in order to compensate Respondents for passenger operating deficits prior to 1942, which in fact were already compensated by the support factor in freight rates. Missing from the record and the report are facts showing that the lower intrastate rates unduly, unreasonably, or unjustly burden or injure interstate commerce. Intervener submits, therefore, that the Commission has exceeded the Federal powers, and that the Federal government has no jurisdiction to this extent.

[fol. 1126] C. Neither the facts of record nor the Commission's findings of basic facts afford any substantial support for the ultimate finding and conclusion that the interstate fares are reasonable.

Finding 1 of the report states:

"The interstate one-way and round-trip coach fares now in effect to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee, and the interstate round-trip fares applicable in sleeping and parlor ears now in effect to, from, and through points in Alabama and Tennessee, are just and reasonable."

In its report the Commission pointed out that only in the four Southern States is the civilian coach fare less than 2.2 cents per mile, and said: "It is a well settled rule that the most helpful evidence in determining the reasonableness of rates or fares in comparison with other rates or fares for like services.".

To the contrary, contrast with this statement the following:

"Comparisons with other rates in the same or adjacent territory, while not a conclusive test of reasonableness of a rate under investigation, have probative value." Youngstown Sheet and Tube Co. v. United States (1935) 205 U.S. 476, 480. (Emphasis added.)

"The rates with which comparison is made must be examined in order to determine whether they are proper yardsticks by which to measure the reasonableness of the rates in issue." Western-Southern Class Rates (1938) 226 I.C.C. 497, 520-521.

When the level of interstate coach fares was increased to 2.2 cents per mile, effective October 1, 1942, the Commission refused to grant Intervener's protest and sub-[fol. 1127] sequently has refused to consider the reasonableness of the increased fares, except for the Ex Parte to 148 increase of 10 percent which is not contested in these proceedings. In effect, the Commission has refused to consider the reasonableness of the interstate fares, and then begs-the-question by making the assumption that comparison of the higher and lower fares shows that the higher is reasonable. The absurdity of this logic is apparent: Why does this comparison not show that the lower fares are reasonable and that the high-fares are unreasonable?

To be recalled in this connection is the fact that except for 14 months from November 15, 1937, to January 15, 1939, Southern coach fares have been on the basis of 1.5 cents per mile since 1933, with the 10 percent in 1942. Why not compare the intrastate rates with these prewar interstate rates? The Commission has a rule stated in Gannett Co., Inc., v. Baltimore & O. R. Co. (1936) 219 I.C.C. 617-

618 as follows:

Where carriers voluntarily maintain a rate between certain points for a long time the presumption is that such a rate is reasonable, and where a long established rate is raised for a short period and then voluntarily reduced to the former basis the presumption is that the advanced rate is unreasonable.

To be remembered is the fact that this rule of comparisons has been developed in the field of freight rates, rather than with respect to passenger fares. The Commission first establishes the general level of class rates upon findings with respect to costs and rate of return, and then uses comparisons for the purpose of properly relating rates on [fol. 1128] particular commodities. In this case, however, we have a separate and important service, and the reasonableness of the rate is not a matter of relation with an established reasonable levic. A more elemental issue is before the Commission as to the reasonableness of the general level. In such determination of reasonableness, the cost of the service and the carriers' rate of return become of primary importance. The parties in these proceedings submitted evidence or contentions in these re-

spects. Why did the Commission not consider such facts and contentions?

Although Respondents had the burden of proof, they did not submit data showing unit expenses which would indicate costs of the coach service. The dissenting report points out this deficiency, saying (sheets 25 and 26):

As a matter of fact it does not affirmatively appear on this record that fares based on the lower intrastate level applied to both interstate and intrastate traffic would be less than required to enable respondents to render the character of service contemplated by section 15a.

The demonstration of a more affirmative conclusion of fact than that of the quoted statement is possible by use of figures available for the record to approximate the unit cost of the service and to indicate the probable effect of reducing all interstate and intrastate fares to 1.65 cents per mile.

The data necessary to show costs of operation with any certainty are available only to Respondents, who made no [fol. 1129] efforts to show such costs. However, Counsel for the North Carolina Utilities Commission made the following calculations on brief and at the oral argument with respect to data in the North Carolina record:

	- 1937	1942
Revenues per coach mile (Ex. 9, p. 17)	.22.02¢	52.44¢ .63
Expense per coach mile.  Divided by passenger miles per coach mile (Ex. 9, p. 31)	25.75¢ 14.74	33.03¢ 33.62
Expenses per passenger mile	1.75é	0.986
Intrastate Rate per mile	1.5¢	1.65é

The same computations from the other records show that the passenger coach-mile expenses for Kentucky and Tennessee were 1.97 cents and 1.89 cents for 1937, and 1.24 cents and 1.22 cents for 1942 respectively. 13

<sup>&</sup>lt;sup>13</sup> Kentucky record, Exhibit 6, pp. 10, 16 and 30; Tennessee record, Exhibit 6, pp. 10, 16 and 30; the data was not shown by Respondents in the Alabama record, but most of the Alabama railroads were in the other proceedings, and there is no reason to believe that the data would differ materially.

These unit cost figures are more likely to be too high than too low, because coach revenues have increased much more than pullman and parlor car revenues, as stated in the Commission's report (sheet 7), and multiplication by the operation ratio would, therefore, tend to overestimate expenses, particularly as coach mile expenses are less than for pullman and parlor cars as shown in Passenger Fares and Surcharges, supra (214 I. C. C. 266). Another calculation of unit coach-mile costs, for the Southern District is [fol. 1130] set forth on page 6 of the Appendix. It shows expenses per coach passenger mile of 1.60 cents for 1937, .88 cents for 1942, and .68 cents for 1943, as compared with the intrastate rate of 1.65 cents and the present interstate rate of 2.2 cents per mile in coaches. This estimate is also likely to be high, as it assumes that expenses for coach operation is equal to the cost of operating the average car in passenger service.

Page 7 of the Appendix shows the probable effect upon revenues of the 17 Respondents, if all coach fares except furlough fares had been at the rate of 1.65 cents per mile during 1943. The result would have been an operating ratio of 64.2 percent instead of 57.3 percent. The reduction in income would, of course, result in reduction of taxes, perhaps by as much as 80 percent of the reduced income. Before taxes, however, the rate of return from the reduced revenues for 1943 would have been 15.4 percent on Intervener's depreciated base and 11.7 percent on Respondents' undepreciated base, compared with actual rates of return 16.8 and 12.8 percents, respectively. (See page 4 of Ap-

Excepting for the post-hearing exhibits filed in the Kentucky case, previously discussed, Respondents rate of return studies were based upon average rates of return from 1921 to 1942, inclusive, and Respondents based their case largely upon the proposition that the level of reasonable rates should be considered over a period of years. The Commission has evidently concurred with this viewpoint [fol. 1131] to the extent of permitting Respondents to recoup for passenger deficits prior to 1942. Such reasoning has the following deficiencies.

(1) The Commission arbitrarily and capriciously failed to consider the fact that the support factor from freight rates had compensated for such deficits. There is, therefore, nothing to recoup.

- (2) The Commission owes a duty to the general public, under Section 15a (2) of the Interstate Commerce Act, to maintain rates at the "lowest cost" consistent with the furnishing of adequate and efficient service; while, on the other hand, the carriers have no right to a guarantee of any rate of return. (See cases cited on page 19 of this petition.) In its report the Commission does not consider this aspect of the proceedings, and the report must be regarded as fatally defective because there has not been the required compliance with section 15a (2).
- (3) The Commission should have considered the reasonableness of the fares in the light of wartime conditions, particularly with respect to the wartime stabilization program. No increases should have been authorized because Respondents do not need the added revenues, and because present rates are not below a reasonable minimum. Passenger Fares and Surcharges, supra.

In its report, the Commission described increased expenses and taxes incurred by Respondents during the war. Missing from this statement of facts, however, is the very essential finding whether Respondents need rate increases to meet these expenses, or whether the great increase in the volume of traffic will actually reduce unit costs, so that expenses per ton-mile and per passenger mile are actually lower than during times when expenses were low but traffic light. 14 As indicated by the prior discussion, Respondents

<sup>14</sup> The importance of volume of traffic on unit costs is illustrated by the following statements of the Commission in Passenger Fates and Surcharges, supra: "The heavy inroads upon the passenger business of railways resulting, among other things, from the competition of automobiles and motor busses have affected unfavorably the unit costs of the traffic remaining on the rails, and if the volume of rail passenger traffic can again be increased, the unit cost will decline when computed in the manner in which the 1933 cost was computed. Thus, an increase of only 0.79 passenger in the average car occupancy for 1933 of 11.2 in the eastern district would have been sufficient, the average passenger-mile revenue and average journey remaining the same, to eliminate the entire passenger deficit of \$11,500,400 for 1933 in that district." (214 I. C. C. 182).

evidence may be analyzed to show that passenger-mile expenses have greatly declined. In failing to make findings in this respect, the Commission's report is deficient, and the decision rests upon unstable basic findings of fact.

[fol. 1133]. In its report the Commission emphasizes the amounts of Respondents' net revenues after all taxes. Are the railroads entitled to pass along their excess profits taxes and other wartime taxes upon the public? The report does not state any reasons why Respondents are entitled to that previously taken by the Commission in Increased Railway Rates, Fares, and Charges, 1942, 248 I. C. C. 545, 556, quoting from Reduced Rates, 1922, 68 I. C. C. 676, 683. The effect of these taxes is well illustrated from the Kentucky record. There Respondents admitted that 80 percent of the increase of intrastate rates would be paid to the Federal Government in income taxes. 15 In all of these proceedings, Intervener has contended that Respondents should bear their fair share of wartime taxes, and should not be permitted to increase rates because of deductions of such taxes from income. The Commission disregarded this contention.

The Commission's report includes a discussion of the trend of railroad revenues, expenses, taxes, and operating

From the Alabama record (Exhibit 40 showing passenger-coach-car-miles revenue passengers carried one mile incoaches) we can compute passenger miles per coach mile for the Southern Region as 30.63 in 1942 and 20.53 in 1941. The other records show the data directly from Respondents exhibits:

6	-		1						1						7 Ky. BR. (Ex. 6, p. 30)			11 Tenn. RR (Ex. 6, p. 30
1937												· i			15.60	•	14.74	14.01
1938	3												٠.		12.33		10:81	10.80
1939							0			á	 -				14.25		14.46	12.59
1940		0. 4		 ,	2 3								٠.		15.77		17.11	13.89
1941															19.53		22.05	17.60
1942	. 1							. 5			 	0 1	٠.		30.85		33.62	28.51

<sup>15</sup> Kentucky record, Tr. p. 122.

income. <sup>16</sup> Using the data for July and December, 1943, the Commission points out apparently unfavorable comparison of percentages. In doing so the report speaks of declining [fol. 1134] increases in net railway operating income, and of a steadily declining deficit in net railway operating income percentages over the previous year. The effect of the language is very confusing, and might even lead the casual reader to assume that Respondents are losing money. In simple figures, much easier to understand, the contrary is

<sup>16</sup> The statistics in the regular monthly reports as made to us by the class I railroads were made a part of the record by stipulation at the oral argument. The latest such reports now on file with and available to us are for the month of December 1943. Compared with the same month in 1942, that month resulted in an increase of 0.2 per cent in freight revenue and 32.8 percent in passenger revenue for the Southern region and 7.4 and 27.2 percent, respectively, for the country, but in a reduction in net railway operating income from all rail operations of 61.4 percent for the Southern region and 55.9 percent for the country. For the year 1943 the increase over 1942 was 13.3 percent in freight revenue and 67.9 percent in passenger revenue for the Southern region and 14.1 and 60.8 percent, respectively, for the country, but the net railway operating income fell below that for 1942 by 9 and 8.3 percent, respectively. monthly increases over the corresponding months of the preceding year in the passenger revenues of the railroads of the country, including those in the Southern region, have been quite steadily declining. Thus, in July 1943 that increase was 74.4 percent for the Southern region and 70.4 percent for the country, and in December of that year it was 32.8 and 27.2 percent, respectively. Also, the net railway operating income has steadily declined from a deficit compared with that for the same month of the preceding year of 12.1 percent for the Southern region and 9.7 percent for the country in July, to 61.4 and 55.9 percent, respectively, for December; so that, due to increased expenses and taxes, the net railway operating income of the railroads in the Southern region dropped from \$28,578,717 in December 1942 to \$11,035,492 in December 1943. (Sheet 8 of Comm. report.)

readily found to be true. The following figures are from the Commission's own reports:

(Dollar figures in thousands)

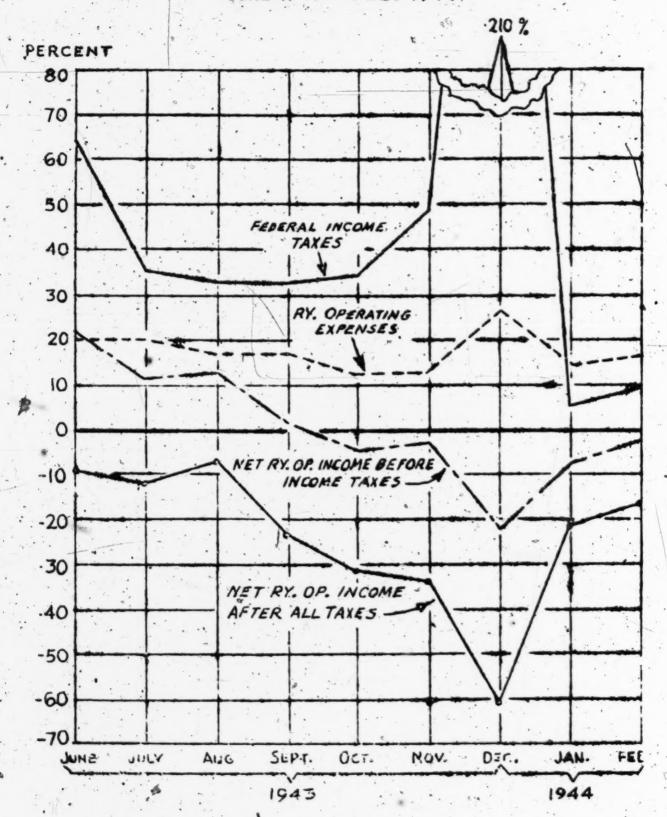
#### Class I Railroads in Southern Region Earnings 1941 to 1943

				Incre over 1	ase ·	
	1943	1942	1941	1942	1941	
Revenues	.293.756	\$1,052,925	\$698,243	22.9	85.3	
Expenses. Operating Ratio.	753,419 58.2			. 20.9	59.3	
Net Ry. Op. Income before		•				
Fed. Inc. Taxes	442,525	344,975	164,315	28.3	169.3	
Federal Income Taxes	244,329	127,261	25,642	92.0	852.8	
Net Ry. Op. Income after all	. 1					
Tires	198,196	217,714	138,673	-9.0	42.9	
Net Bloome before Fed. Inc.						
Taxes	375,724	253,295	100,487	48.3	273.9	
Net Income after all Taxes.	131,395	126,034	74,846	4.3	75.6	
Passenger Revenues						
July	24,751	14,189	6,032	74.4	310.3	
December	26,750	20,149	8,022	32.8	233.5	
Net Ry. Op. Income before Fed. Inc. Taxes			· · ·	1	N	
July	34,627	31,272	. 14,898	. 10.7	23.2	
December	25,971	33,383	20,820	-22.2	24.7	
Net Ry. Op. Income after Taxes					- 3	
July	14,290	: 16,262	11,746	-12.1	21.7	
December	11,035	28,379	12,516	-61.4	+11.8	

[fol. 1135] But even if one wishes to discuss the data in the confusing language of the Commission's report, the fact should be noted that the figures for December 1943 are wholly unsuited for trend comparisons, because in this month the carriers made adjustments for taxes and expenses, particularly retroactive wage awards, properly allocated over the full year. This fact is illustrated by the graph on the next page of this petition.

(Here follows 1 photolithograph, side folio 1136)

CHANGE FROM CORRESPONDING MONTH IN THE PREVIOUS YEAR EXPENSES, TAXES AND OPERATING REVENUE OF CLASS I RAILROADS IN SOUTHERN REGION JUNE 1943 - FEB. 1944



SOURCE: Monthly Reports of ICC, Bureau of Transport Economics and Statistics

[fol. 1136a] Another consideration mentioned in the Commission's report is the mention of discouragement of passenger travel, desired by O.D.T., by means of coach fare increases. These four records contain no support for such findings. So far as data is concerned, the report states (sheet 7) that for the first 10 months of 1943, passenger coach revenues of all class I railroads in the Southern region increased 128.5 percent over the corresponding period of 1942, as compared with an increase of 30.2 percent in parlor and sleeping car revenues. The Commission's re[fol. 1137] port also states (sheet 14):

"An increase in the intrastate fares to the interstate level under existing conditions, respondents insist, will not result in any important loss of traffic to other forms of transportation and will produce increased revenues substantially equivalent to those estimated by them."

This statement is then used in the Commission's specific finding No. 5. Therefore, from these findings of fact, the conclusion is obvious that there will be no discouragement of train travel by the increased fares.

In summary, the Commission's finding with respect to the present reasonableness of interstate fares has no basis in fact, unless the Commission is justified in disregarding the public interest in low cost transportation for the purpose of compensating Respondents for supposed deficits prior to 1942, which in fact were compensated from the passenger service support factor in the freight rates.

On the other hand, the record is full of facts showing that the interstate level is unreasonably high: (1) The comparisons of rate history show that the fare was at the actual and practical peacetime maximum. (2) The peacetime fare is presumably the reasonable maximum. (3) The unit cost of the service is far below the 1.65 cent fare. (4) Respondents are earning far more than a fair return. (5) The passenger service support factor, multiplied by increased traffic, either should satisfy any need for recoupment of revenues, if recoupment is justified; or the revenues from the support factor are resulting in unreaffol. 1138] sonably high revenues which are wholly unnecessary, because the passenger services are now as profitable, or more profitable, than the freight services.

Therefore, Intervenor contends that neither the facts of record nor the Commission's findings of basic facts afford any substantial support for the ultimate finding and conclusions that the interstate fares are reasonable.

The Commission's error is dud to its disregard of changed conditions resulting from the war, in order to adhere to its 1936 decision in Passenger Fares and Surcharges, supra, to which 10 percent increases were added in Increased Railway Rates, Fares, and Charges, 1942, supra. Intervenor respectfully submits that the Commission has failed in its duty to the public as required by section 15a, by not giving effect to these phenomenal changes in coach traffic.

[fol. 1139] D. The Commission Erred, As a Matter of Law and Contrary to Its Promises, by Failing and Refusing to Give Due Consideration to Wartime Stabilization Policy Enacted by Congress in Section 1 of the Stabilization Act of October 2, 1942

Section 1 of the Stabilization Act directs the President of the United States to stabilize prices "so far as practicable " on the basis of levels which existed in September 15, 1942." The President was then directed to provide for adjustment in such prices "to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities." A proviso immediately follows:

Provided, That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State or municipal authority having jurisdiction to consider such increase.

In proceedings since the enactment of this proviso, the Interstate Commerce Commission has frequently stated, as it does in the instant report (sheet 18), that the provisions of the Price Control and Stabilization Acts, "except those pertaining to the giving of notice and consent to intervene to the designated Federal agent, made no

changes in or additions to the Interstate Commerce Act with respect to the rates, fares, and charges of common car-

riers by railroad."

Intervenor concedes that the Price Control and Stabilization Acts do not limit the powers of the Commission under [fol. 1140] the Interstate Commerce Act. Cf. Vinson v. Washington Gas Light Co., — U. S. — (decided March 27, 1944). Intervener merely requests that the Commission exercise its powers under the Interstate Commerce Act consistently with its statements in Increased Railway Rates, Fares, and Charges, 1942, 255 I. C. C. 357, 392-393:

The Interstate Commerce and the Price Control and Stabilization Act declare important congressional policies which are not contradictory, but are complementary. In the administration of the Interstate Commerce Act, we give consideration, when applying the standards of lawfulness of charges made under that act, to the fact that for a Nation at war a major problem is to prevent undue inflation of prices.

If, in stating that the Price Control and Stabilization Act made no changes or additions to the Interstate Commerce Act, the Commission implied that it was free to disregard the policies embodied therein, it erred, as a matter of law, because, as the United States Supreme Court has recently said, in Southern S. S. Co. v. National Labor Relations Board (1942) 316 U. S. 31, 47; 62 S. Ct. 886, 894:

Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task.

Again in McLean Trucking Co. v. United States (1944) 64 S. Ct. 370, 377, the Supreme Court stated:

But in executing these policies the Commission may be faced with overlapping and at times inconsistent policies embodied in other legislation enacted at different times and with different problems in view. When this is true, it cannot without more ignore the latter. The precise adjustment which it must make, however, will vary from instance to instance depending on the extent to which Congress indicates a desire [fol. 1141] to have those policies leavened or implemented in the enforcement of the various specific provisions of the legislation with which the Commission is primarly and directly concerned.

Intervener's concept of the policies of the Price Control and Stabilization Acts 15 applied to common carriers, is as follows:

- (1) Common carriers should be permitted to earn revenues sufficient to enable them to furnish adequate and efficient services during the war. This is true because such services are necessary to the effective prosecution of the war.
- (2) Common carriers should not be authorized to increase rates, fares, and charges above the reasonable minimum unless added revenues are necessary. In Passenger Fares and Surcharges, supra, the Commission found that Southern coach fares of 1.5 cents per mile were reasonable.
- (3) Common carriers, if permitted to earn high profits and to recoup for prewar deficits when possible from favorable results of increased volume of traffic at rates and fares in effect on September 15, 1942, [fol. 1142] should certainly not be permitted to take advantage of inflationary wartime conditions to make increases of rates, fares, and charges not presently necessary.

The complementary nature of these policies with those of the Interstate Commerce Act are readily apparent. Section 15a (2) of that Act provides, in part, as follows:

In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors. • • to the need,

<sup>15</sup> For an analysis of the wartime stabilization program and its policies see Lincoln Sav. Bank of Brooklyn v. Brown, 137 F. 2d 228; United States Gypsum Co. v. Brown, 137 F. 2d 360; Philadelphia Coke Co. v. Bowles, 139 F. 2d 349.

in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. (Emphasis added.)

The above two factors specified by section 15a (2) are also the principal requisites in any determination of just and reasonable rates. The United States Supreme Court has stated; "The rate-making process under the (Natural Gas) Act, i. e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and consumer interests." Power Comm'n v. Hope Gas Co., supra, 320 U. S. 591, 603.

During this war, except for common carrier and public utility rates, consumers interests in prices are largely in the hands of the Economic Stabilization Director and the agencies associated with him in the stabilization program, including the Office of Price Administration. For this protection of consumer interests, Congress has established general policies, set forth in the first sections of the Price [fol. 1143] Control and Stabilization Acts. Intervenor contends that the Commission, an agency of Congress, should, in its consideration of the policy requirements specified by Congress in section 15a (2) of the Interstate Commerce Act, include within such consideration the relation of the Congressional policies of the Price Control and Stabilization Acts. Jersey City v. Hudson & M. R. Co., (unreported).

In Acreased Railway Rates, Fares, and Charges, 1942,

supra, the Commission said (255 I. C. C. 392):

We recognize the congressional objectives of the Price Control and Stabilization Acts to prevent inflation during the present emergency, and in the administration of those statutes the Director of Economic Stabilization and the Price Administrator, will have our cooperation.

Intervenor respectfully requests that the Commission fulfill its promise in this proceeding.

E. The Commission's Decision Is Unwarranted Interference with the Cooperation between the President of the United States and the State Commissions in the Latters'

Efforts to Aid in the Effective Prosecution of the War, as Requested of Them by the President.

In his "Hold-The-Line" order of April 8, 1943, 8 F. R. 4681, the President of the United States stated:

4. The attention of all agencies of the Federal Government, and of all State and municipal authorities, concerned with the rates of common carriers or other public utilities, is directed to the stabilization program of which this order is a part so that rate increases will be disapproved and rate reductions effected, consistently with the Act of October 2, 1942, and other applicable federal, state or municipal law, in order to keep down the cost of living and effectuate the purposes of the stabilization program.

[fol. 1144] In the exercise of its powers, the Kentucky Railroad Commission gave in its decision, as one ground for denial of the increases, this request for cooperation in the wartime stabilization program. Intervener appeared in all four State proceedings as a Protestant. Therefore, in these proceedings we have four States acting according to the request of the President of the United States, the Economic Stabilization Director, and the Price Administrator, consistently with a general policy established by Congress as necessary to aid in the effective prosecution of the war. If the Interstate Commerce Commission adheres to its present decision, it will be obstructing this cooperative program and policy.

Under records of facts which contain all of the doubts pointed out by the dissenting opinion, should the Interstate Commerce Commission, an agency of Congress, frustrate this cooperation by pushing aside the wartime stabilization program of Congress as a consideration not to be taken into account? Certainly it will not if it gives effect to the fundamental principle that it should not interfere with the exercise of State powers unless the justification shall "clearly appear" and shall "conform to a high standard of certainty." Florida v. United States, supra (282 U.S. 219), Illinois Central Railroad Co. v. Public Utilities Commission, 245 U.S. 493.

<sup>16</sup> Kentucky record, Exhibit No. 2, pp. 10-12, inclusive.

Intervener respectfully submits that the records and the Commission's report in these proceedings do not show any clear and certain justification for the Commission's inter[fol. 1145] ference with the State Commission's cooperation in the effective prosecution of the war in accordance with the wartime stabilization program.

## Conclusion

In summary, Intervenor submits that in 1943 Respondents were earning more than a fair rate of return; that their increases of coach fares since September 15, 1942, resulted and will result in unreasonably high profits from unreasonably high fares which are possible only by taking undue advantage of wartime conditions; that the Commission's approval of such increases is contrary to the policy of section 15a (2) of the Interstate Commerce Act and the complementary policies of the Price Control Act and Stabilization Act; that the Commission's decision in these proceedings is in violation of the reserved constitutional rights of the States of Alabama, Kentucky, North Carolina, and Tennessee, and is unwarranted interference with the cooperation of the duly authorized State Commissions of those States in the President's program for the effective prosecution of the war.

[fol. 1146] Intervenor respectfully requests that the Commission reconsider its decision of March 25, 1944, and hold that these records do not contain any clear and certain justification for the exercise of Federal jurisdiction.

Respectfully submitted, Chester A. Bowles, Price-Administrator. Richard H. Field, General Counsel. Bernard M. Fitzgerald, Transportation Counsel.

David F. Cavers, Assistant General Counsel. Warren Price, Jr., Chief Counsel, Common Carrier Section. M. D. Miller, Attorney.

# Certificate of Service

I hereby certify that I have served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each party.

Dated at Washington, D. C., this 26th day of April, 1944.
M. D. Miller, Attorney.

. 17 Southern Railroads
Revenues, Expenses and Sérvice Operating Ratios 1943

		To	<b>Fotal Operatin</b>	Du Su	Freight	Service As	ssigned	Passenge	r Service?	Assigned.
,	Respondent	Revenues	Expenses	Operating	Revenues	Expenses	Operating	Revenues	Expenses	Operating Opposition
		(Linousano	dollars)	10/ ) OTTEN	(tilomsand	domars)	Tracto (70)	(CII)	domaria)	10/10/10
_	Ala G S	23538	12254	52.1	17768	9730	54.8	5770	2524	43.7
	A R C	7211	5312	73.7	8374	4392	68.8	837	920	109.9
9	A C 1.0	153601	81783	53.2	183858	54285	52.3	49743	27497	55.3
9 4	Cent Ca	38030	23180	50.5	27828	17107	61.5	11102	0209	54.7
-	C & O.a	208513	115045	55.2	182836	. 95579	52.3	25677	19467	75.8
9	4 L & C N C	37214	19764	53.1	28643	15505	54.1	8571	4259	49.7
1	Clinchfielda	12707	6202	46.5	12583	5964	47.4	214	238	111.2
- ot	C M & OA	37859	24720	65.3	34634	22030	63.6	3213	6292	83.4
	9 I/C (incl V & M V)	247637	159790	64.5	200349	127512	63.6	47288	32278	68.3
2	A N A	208799	118152	56.6	154592	90459	58.5	54207	27694	51.1
=	N C & St La	42284	26459	62.6	31696	20490	64.7	.10588	- 5969	56.4
12	Norfolk-So.a	8378	6182	73.8	7912	5595	70.7	466	587	126.0
2	SI SF	107427	71055	66.1	78495	54552	69:5	28932	16504	97.0
14	SAL	137258	80824	58.9	89839	54920	61.1	47419	25904	54.6
1	Southern	245532	136604	.55.6	177020	101633	57.4	68512	34971	51.0
9	Tenn Cent	4842	3436	71.0	4071	2824	69.4	177	612	79.4
1	W. of A.	5342	3106	58.1	3344	2333	8.69	1998	773	38.7
Tota	Total 17 Southern Roads	1527162	893868	58.5	1162788	684910	68.8	364362	208946	57.3
				. 1						

a Revenues and expenses assigned to passenger and freight services from 1943 annual report to the I. C. C.

7 North Carolina Railroads Comparison of 1943 Actes and Estimated Service Operating Ratios, from Available 1943 Annual Reports st. 9 mo.. Estimated 53.1 175.9 119.3 52.6 60.0 60.7 Docket 29037, Ex. 13 8 Tennessee Railroads Ratios shown by Exhibits introduced at Hearings. 1939. 4. 1940. 1942. 1942. 1943 (est.) Actual APPENDIX-Page 3 Operating Ratios Passengel Docket 29000, Exs. 13 and 14 10 Kentucky Railroads 1943 (est.) lst. 6 mo. St. Louis-San Francisco Total 7 Roads... states: "The passenger operating ratio of 1943 was lower than for 1942." 943 - The Commission's report Docket 28963, Ex. 17, p. 16 Passenger Freigh 12 Alabama Railroads

[fol. 1149]

APPENDIX-Page 2

600				*										
(01)	1943 Rate of Return on	Respond- ents Base	7.1%	0.4	20	2.0	5.5	4.0	4	10 x	50.00	6.1	5.8%	
6	1943 F	Inter- venor's	8.2%	0 to	2.0	35.0	10.8	6.2	4	0.0	6.1	2.4	7.4%	Tonne
ُ ھُڑ _	Net Ry. Op. Inc. less Bent for	Leased Roads 1943	\$2981 515	15497	37166	3060	36720	25211	870	22475	32749	680	\$227088	North Compline
	Not By	Op. Income	\$3001	15705	37216	5233	38222	5083	943	28704	35745	212	\$239447	
9	Rate of	Respond- ents Base	21.8%	18.1	13.6	7.9	9.3	18.0	6.0	12.9	14.1	10.5	12.8%	" Vantucker
nde).	947 3	Inter R venor's Base	25.3%	12.0	16.7	43.0	18.9	220	6.4	16.7	16.6	26.3	16.8%	the Alchama
Rates of Return Southern Railroads r figures in thousands (4) Prior to Deduction	Net Ry. Op. Inc. less Rent for	Leased Roads 1943											\$519176	de in the
Rates of 17 Southern Dollar figures (3) Prior	Net Ru	Op. Income 1943	\$9196	58205	86160	5929	65526	13179	1308	44704	92368	1854	\$529823	
(2)	1	ents December 31, 1942											\$4139197	and poolled when
£ 6	- Lague	venor's December 31, 1942	\$36284 6705	276406	5151.12	8741	338833	57962	19195	264760	538522	7055	\$3083801	that the named
		Respondent	Ala. G. S.	A. C. L. Cent. Ga.	C. & O. & T. P.	Clinchfield	I. C. & Y. & M. V.	N. C. & St. L.	Norfolk-So.	SAI	Southern	V. of A.	Total 17 Southern Roads	. Swinbals A K N and T moun th
	3	4. Proceeding.	AT.	ANT	KT.	KNT	AKT	AKT.		AN	AKNT	Y	otal 17 Sout	Avinhola A

	(7) Expense Coach Passenger Miles (cents) (5) + (6) 1.60 2.12 1.75 1.75 1.23 1.20 88 68
<b>2</b>	(6) Coach Miles per Coach-Car Mile Mile (3)/(4) 14.24 10.84 13.17 15.149 19.97 29.55 41.00
to Monthly and Annual Reports to the Interstate Commerce Commission:  dule 211N—Annual Reports unts 701, 702, 702), 708, 716 less 775, 775, 776, 776, 776, 776, 776, 776,	(5) • Expense per Passenger or Coach Car Mile (cents) (1)/(2) 22.81 22.81 23.01 23.01 23.01 23.01 23.01 23.01
ree Commission  Amual Rep  nd Balance She  ch Passenger Mi  m District	(4) Passenger Coach Miles. (000) 146,443 132,193 135,339 143,239 143,285 143,285 143,286 223,290 296,995*
Approximate 5  Monthly and Annual Reports to the Interstate Commerce Commission: dule 211N.—Annual Reports unts 701, 702, 702)-2, 708, 716 less 775, 775-2, 776, 776-2—Armual Reports C. Revenue and Expense reports for 1943 mn 3 less rent for Leased Roads from I. C. C. Income and Balance Sheet re mn 4 divided by Column 1 mn 3 divided by Column 2 as Column 4 mn 8 divided by Column 1 mn 7 divided by Column 2  APPENDIX—Page 6  Estimate of Unit Costs per Coach Passenger Mile Class I Railroads Southern District	(3) Passenger Miles in Coaches (000) 2,085,307 1,433,328 1,782,977 2,219,753 3,332,005 6,599,090 12,177,590
Appres s Monthly and Annual Reports to the Inte dule 211N.—Annual Reports unts 701, 702, 702/2, 708, 716 less 775, 77; C. Revenue and Expense reports for 1943 mn 3 less rent for Leased Roads from I. C. mn 3 divided by Column 1 as Column 3 as Column 4 mn 8 divided by Column 2 mn 6 divided by Column 1 mn 7 divided by Column 2 as Column 4 mn 8 divided by Column 2 Appres 2 column 2 Appres 2 column 2 divided by Column 2 Appres 3 divided by Column 2 Appres 3 divided by Column 2 Chass I Raji	(2) Passenger Car Miles (900) 517,936 488,296 495,193 514,512 563,619 667,340
ndents Monthly and Annuel Reports Schedule 211N—Annual Reports Accounts 701, 702, 702½, 708, 71 I. C. C. Revenue and Expense re Column 3 less rent for Leased Re Column 3 divided by Column 1 Column 3 divided by Column 2 Same as Column 3 Same as Column 4 Column 7 divided by Column 1 Column 8 divided by Column 1 Column 7 divided by Column 2	Expense Assigned to Passenger Service (\$000) 118,150 112,356 113,939 122,171 134,730 174,303 219,337 219,337
pondents Monthly and 1—Schedule 211N—A 2—Accounts 701, 703, 3—I. C. C. Revenue a 4—Column 3 less rent 5—Column 4 divided 15—Column 3 divided 17—Same as Column 3 4—Same as Column 4 4—Column 5 4—Same as Column 6 4—Column 7	(1) Expense P Assigned
fielt +151    Source = Respondent   Column 1—Sche   2—Acco   3—1. C.   3—1. C.   4—Colum   5—Colum   7—Same   8—Same   8—Same   9—Colum   10—Colum   10—	1937 1938 1938 1939 1941 1941 1942 1943 • Estimated.

		•		10	.0.4	8 0 0			
	4,	4.74	Revenues 192, 496, 971	16,126,225	\$176,370,746 1.864¢	The average revenue per passenger-mile, non-furlough, at the rate of 1.65 cents per mile would be 1.4¢, because 1.65¢ is 75% of 12.2 cents (i. e., 1.4¢ is 75% of 1.864¢); note also the correlation of this figure with those on pages 5 and 6 of this petition). The difference between the revenues of the two fares would be .464¢, which, multiplied by non-furlough coach passenger-miles of 9,460,686,000, indicates probable reduction in revenues of \$43,897,583, which would have the following effect upon the carriers revenue status:		=	
			Revenues 92, 496, 97	16,1	176,3	of 2.		1	
		.,11		-1		75% lifferendical		•	
			iles			75,6 is 75,6 is 700, is			
		.*	Per-M	3,000	000	1. (n) (686,			
		•	Coach Passenger-Miles 10,750.784.000	1,290,098,000	9,460,686,000	becau etitio 9,460			
		•	ch Pa	1,29	9,46	per passenger-mile, non-furlough, at the rate of 1.65 cents per mile would be 1.46, be are would be take the correlation of this figure with those on pages 5 and 6 of this peares would be .4646, which, multiplied by non-furlough coach passenger-miles of \$43.897.583, which would have the following effect upon the carriers revenue status			
		•	Coa		1	d be 6 of r-mil			.00
	B.,					woul senge	000	417	65.2% 57.3%
	sh Fa					mile ges 6 h pas arrie	\$364,362,000 43,897,583	320,464,417 208,946,000	20
	Coa					ts per coac the	\$364 43	320	4.
Le. 1	Effect of Reduction of All Southern Coach Fares to 1.65 cents per mile	17 Southern Railroads 1943				5 cen hose lough upon			
APPENDIX-Page. 7	Il Sou	Rail 13	Computations			of 1.6			
NDIX	of A	ithern P	nduic	27)		rate your by no wing		3 :	
APP	etion	7 Sou	15	l, Ex		his fig	: :		
	Redu	-		record		of the			dix).
	et of			Ala	lough	furton lation lich,		4	bben
	Effe			See	nfur	corre c, wh would			this A
	1			nile.	es, no	the the hich			venue 1 of
				. per	oach	e alst dd be 83, w	43	::	ed re
		.*		nissic 1.25¢	oile,	pass mot s wor 897,5	es, 19		reduc g rati
		entrage .	•	Com %	ger-r	864¢) fare f \$43,	venu	nues	io at eratin
			9	s To	fares	of 1. of 1. e two	er Re	Reduced Revenues. enger Expenses, 194	3 Ope
	-			eport fare	ough per 1	75% of th	d Passenger Reduction	uced r Exp	ratin
3				(From Reports To Commission) Furlough lares (12%, @ 1.25¢ per mile. See Alg. record, Ex. 27).	Non-furlough fares. Revenue per passenger-mile, coaches, non-furlough	44 is	Total Passenger Revenues, 1943 Reduction	Reduced Revent Passenger Expenses,	1943 Operating ratio at reduced revenues. Compare, 1943 Operating ratio (p. 1 of this Appendix)
[fol. 1153]				(From Reports To Commission) Furlough fares (12% @ 1.25¢ p	Rev	The average revenue (i. e., 1.4¢ is 75% of 1.8 the two reduction in revenues of the two reduction in revenues of	Tot	Pas	<b>4</b> 0
To					•	E E			
							1		7. "

# [fol. 1154] Before the Interstate Commerce Commission

### Docket No. 29037

## Tennessee Intrastate Fares

Motion for Entry of Order—Filed May 1, 1944

[fol. 1155] Come now, by counsel, the railroads operating in the State of Tennessee, respondents in the above-entitled proceeding, and respectfully show to the Commission as follows:

I

That in the report of the Commission herein, dated March 25, 1944, it was stated as follows:

"In accordance with our practice in such proceedings, we shall leave to respondents and the respective State Commissions the matter of adjusting the intrastate fares to conform to these findings. If this is not accomplished within 30 days from the service of this report, consideration will be given to the entry of an appropriate order."

[fol. 1156] Said report was released and served on March 30, 1944.

#### H

That, no action having been taken by the Railroad and Public Utilities Commission of the State of Tennessee, counsel for these respondents on April 19, 1944, addressed a letter to said Commission wherein reference was made to the above-quoted language from the report of this Commission, and wherein it was further said.

"On behalf of the railroads operating in Tennessee, we are writing to advise that they are prepared to adjust the intrastate fares to conform with the findings referred to and within the prescribed time limit of 30 days, if authorized to do so by your Honorable Commission without the entry of a formal order by the Interstate Commerce Commission.

"It is respectfully requested that such authorization be given."

#### Ш

That although the time limit of 30 days as fixed by this Commission has now expired, the Railroad and Public

Utilities Commission of the State of Tennessee has failed to authorize these respondents to adjust the intrastate fares to conform to the findings contained in said report of March 25, 1944, and respondents, therefore, have been and are unable to proceed to so adjust said intrastate fares.

[fol. 1157-1158]

IV

The premises considered, these respondents move that the Commission proceed forthwith to enter an appropriate order..

Respectfully submitted, W. A. Northcutt, James B. Gray, Charles Clark, Frank W. Gwathmey, Attorneys for Respondents.

May 1, 1944.

Certificate of Service

I hereby certify that I have this day served the foregoing motion upon all parties to this proceeding by mailing a copy thereof by first-class mail duly addressed to each such party.

· Dated at Washington, D. C., this 1st day of May, 1944.

Frank W. Gwathmey.

[fol. 1159] At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 8th Day of May A. D. 1944

No. 28963

Alabama Intrastate Fares

No. 29000

Kentucky Intrastate Fares

No. 29036

North Carolina Intrastate Coach Fares

No. 29037

Tennessee Intrastate Fares

ORDER .

These proceedings having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission, on March 25, 1944, having made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and

It appearing, That as set forth in said report, and in accordance with the practice in such proceedings, the Commission left to respondents herein and the respective State Commissions, for a period of 30 days from March 30, 1944, the date of service of said report, the matter of adjusting the intrastate passenger fares under consideration in these proceedings to conform to the findings and conclusions made in said report, and that no such adjustment of the said intrastate fares has been made or authorized by the respective State Commissions:

It is ordered, That respondents in each of these proceedings, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before July 1, 1944, upon notice to this Comfols 1160-1162] mission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to abstain, from practicing the undue prejudice and preference and the unjust discrimination found in said

report to exist

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before July 1, 1944, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply, passenger fares for intrastate transportation in the respective States which shall remove the undue prejudice and preference and the unjust discrimination found in said report to exist; -provided, that the resulting aggregate charge made by any of said respondents for intrastate transportation in any of the States shall not exceed the aggregate charge made for like accommodations and for a like distance by the same for interstate transportation to, from, for respondent through such State.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission. W. P. Bartel, Secretary. (Seal.)

[fol. 1163] [File endorsement omitted.]

[fol. 1164] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

### Civil Action No. 706

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, Plaintiffs,

VS.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

Petition—Filed June 10, 1944

1

The petitioners and plaintiffs, State of Alabama and the Public Service Commission (of Alabama), bring this action against the United States of America and the Interstate Commerce Commission (the latter hereinafter called the Commission), for the purpose of enjoining, setting aside, and annulling orders of the Commission issued on May 8, 1944, in a proceeding before it entitled "Alabama Intrastate Fares" and identified as Interstate Commerce Commission's Docket No. 28963-1, although sometimes identified as Docket No. 28963.

[fol. 1165]

 $^{2}$ 

The plaintiff, State of Alabama, is a sovereign state, and the Public Service Commission is a department thereof, created by the laws of said State, and vested with authority, among other things, to regulate and prescribe just and reasonable intrastate railway passenger fares in both coaches and other cars. The domicile of the plaintiffs and petitioners, for all purposes hereto pertinent, is at the State Capitol, Montgomery, Alabama.

3

The jurisdiction of this Court is invoked pursuant to the provisions of Sections 41, subsection (28), 43 to 48, inclusive, Title 28, United States Code, and the defendant, United States of America, is sued pursuant to the provisions thereof. The defendant, Interstate Commerce Commission, is an administrative commission, created pursuant to the provisions of the Interstate Commerce Act (Title 49, U. S. Code).

[fol. 1166]

.5

The hereinafter mentioned Louisville and Nashville Railroad Company is a corporation existing under and by virtue of the laws of the Commonwealth of Kentucky, and domiciled in Louisville, Kentucky, within the jurisdiction of this Court, and was one of the original petitioners to the hereinafter described proceeding before the Commission.

6

On or about October 26, 1942, after having been permitted to increase their interstate passenger fares to 2.2 cents per mile by the Commission, the Alabama Great Southern Railroad, Alabama Tennessee and Northern Railroad Corporation (John T. Cochrane, Jr., Trustee), Atlanta, · Birmingham and Coast Railroad, Atlantic Coast Line Railroad, Central of Georgia Railway (M. P. Calloway, Trustee), Gulf, Mobile and Ohio Railroad, Illinois Central Railroad, Louisville and Nashville Railroad, Nashville, Chattanooga and St. Louis Railway, St. Louis-San Francisco Railway (J. M. Kurn and John G. Lonsdale, Trustees), Seaboard Air Line Railway (L. R. Powell and Henry W. Anderson, Receivers), Southern Railway Company, Tennessee, Alabama and Georgia Railway, and the Western Railway of Alabama (all corporations, although-[fol. 1167] those designated are operated by trustees or receivers), filed with the Public Service Commission (of Alabama) tariffs designed to become effective on December 1, 1942, increasing numerous intrastate passenger fares to 2.2 cents per mile.

The Public Service Commission (of Alabama) ordered a suspension of the tariffs and instituted in investigation under Docket No. 6818, naming the said railroads parties respondent thereto. After a full and complete hearing wherein each and every party respondent was given ample opportunity to offer evidence as to any need or justification for such increase, and no party respondent offering evidence justifying same, the Public Service Commission (of

Alabama) found that the parties respondent had failed to show that they needed any additional revenue; that the evidence indicated that said respondents had ample revenue to take care of their operating expenses and in addition earn a reasonable return on their investments; that: is was a matter of common knowledge that passenger traffic of the said railroads in Alabama was such that it was seldom when any railroad could furnish seating capacity for the transportation of intrastate passengers (traveling in coaches); that the interstate passengers. would have seats while the intrasate passengers would be required to stand; that the difference between interstate [fol. 1168] and intrastate fares did not create any unreasonable discrimination or undue prejudice; and that the respondents' revenues as shown from both freight and passenger operations had increased to an extent without precedent in the history of railroad operations in the Whereupon, the Public Service Commis-United States. sion (of Alabama) issued an order suspending the saidtariffs. Despite the fact that the statutes of Alabama provide for an appeal, no party respondent appealed.

On or about the 17th day of March, 1943, the Alabama Great Southern Railroad Company, Atlanta, Birmingham and Coast Railroad Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company (M. P. Calloway, Trustee), Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railway, Seaboard Air Line Railway Company (L. R. Powell, Jr., and Henry W. Ander son, Receivers), Southern Railway Company, St. Louis-San Francisco Railway Company (J. M. Kurn and John .G. Lonsdale, Trustees), and the Western Railway of Alabama (hereinafter, for sake of brevity and clarity, being designed as the railroads) filed with the Interstate Commerce Commission a petition seeking an investigation. under Sections 2, 13, and 15 of the Interstate Commerce Act of Alabama intrastate passenger coach fares.

[fol. 1169]

8

Almost contemporaneously with the above proceedings, numerous railroad companies followed similar proceedings; first in the States of Tennessee, Kentucky and North

Carolina, and afterwards before the Interstate. Commerce Commission. The Commission consolidated all of the proceedings before it. After a hearing, Examiner C. E. Stiles filed a proposed report with the Commission, a part of which, under the subject of "DISCUSSION, ULTIMATE FINDINGS OF FACT, AND CONCLUSION," is hereto attached, marked Exhibit "A," and made a part of this complaint or petition as fully as though incorporated in this paragraph. Thereafter, the Commission made a report, a copy of which is hereto attached, marked Exhibit "B," and made a part of this complaint or petition in like manner. with the Examiner's report. Complaints and petitioners then filed an application for reconsideration with the Commission, a copy of which is hereto attached, marked Exhibit "C," and made a part hereof. Under date of May. 8, 1944, the Commission issued two original orders and a corrected order, copies of which are hereto attached, marked Exhibits "D," "E," and "F," respectively, each of which is made a part hereof in like manner.

[fol. 1170]

Your petitioners or plaintiffs state that the State of Tennessee and the Commonwealth of Kentucky, or their daly acting and constituted authorities, have or are filing in this Court a proceeding similar to this, seeking the same relief and supported by similar evidence. That it will facilitate the work of this Court if all three causes are consolidated into one proceeding, and your petitioners or plaintiffs are favorable to such joint proceeding.

10

Your petitioners or plaintiffs have exhausted all remedies available to them before the Interstate Commerce Commission.

11

Your petitioners or plaintiffs aver that in said proceedings the Interstate Commerce Commission erred, as a matter of law, in the following particuluars and respects:

(a) In ignoring that past deficits suffered from passenger operation by the railroads were compensated for and included in the form of higher freight rates which the Alabama public is now paying.

[fol. 1171] (b) In selecting the months of December, 1942, and 1943, as exemplary of railway operation, as it was in the latter that the railroads paid retroactive wages covering practically an entire year.

- (c) In considering interstate troop movements as a ground to increase intrastate passenger fares.
- (d) In considering past alleged deficits in passenger operations as a ground for increasing intrastate fares.
- (e) In considering the fares paid by the Federal Government as a ground for increasing intrastate passenger fares.
- (f) In considering the reduced fare of 1.25 cents per mile allowed military personnel a ground for increasing intrastate fares.
- (g) In finding that 2.2 cents per mile a reasonable interstate or intrastate passenger fare.
- (h) In finding that the present Alabama intrastate passenger coach fare creates an undue or unreasonable advantage, preference, or prejudice between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other.
- (i) In finding that the difference between the present intrastate and interstate passenger coach fares created any undue, unreasonable or unjust discrimination against interstate or foreign commerce.
- (j) In finding that increasing the Alabama intrastate fare from 1.65 to 2/2 cents per mile would increase the revenue of the railroads approximately \$725,000.00 per year. It is pointed out that while this amount would be collected from the traveling public, the record conclusively discloses that many of the railroads are within the "excess income tax bracket" and under the most favorable conditions or computations could retain at most only 19 per cent of such amount.

[fol. 1172] (k) In finding that the intrastate fares could be used to break down the interstate fares.

(1) In finding that the increased intrastaté passenger fares would not result in a material loss in traffic.

- (m) In finding that the transportation conditions have not materially changed since the evidence in Exparte 148 was compiled.
- (n) In finding the present interstate fares to and from points in Alabama reasonable, and in finding the present intrastate fares unreasonable.
- (o) In finding the services rendered interstate and intrastate passengers similar.
- (p) In finding that the present Alabama intrastate passenger coach fares do not contribute their fair share of the revenue necessary to enable the railroads to render adequate and efficient transportation service under economic management.
- (q) In ignoring the stabilization program of the Federal Government as expressed and embodied in the Emergency Price Control Act of 1942, as amended; the Act of October 2, 1942 (Public Law 727, 77th Congress), and Executive Orders of the President of the United States, No. 9250 (October 3, 1942) and No. 9328 (April 8, 1943).
- (r) In ignoring the Congressional mandate set forth in Section 15 (a) (2) of the Interstate Commerce Act in the following words:

"In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect on the movement of traffic by the carrier [fol. 1173] or carriers for which rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest costs consistent with the furnishing of such service; to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service." (Italies supplied.)

(s) In overruling the application for rehearing.

T.

That Sections 13 and 15 of the Interstate Commerce Act, as interpreted by the Commission, exceed congressional

intent, and violate the Tenth Amendment of the Constitution of the United States.

13

That the said Orders of the Commission deprive the citizens of Alabama of property without due process of law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

14

That in the event the said Orders are not set aside, the traveling public in Alabama will suffer irreparable injury [fol. 1174] and damage in the form of excessive passenger fares in intrastate transportation.

1

That in the event the said Orders are not set aside the petitioners or plaintiffs will suffer irreparable injury and damage in that they will be deprived of their valuable right to regulate intrastate commerce and intrastate passenger fares on railroads, and in addition thereto the State of Alabama will suffer irreparable injury and damage in that it will have to pay materially higher passenger fares for its traveling employees.

16

That the present Alabama intrastate coach passenger fare is sufficient to permit the railroads to continue to render the services contemplated within the provisions of Section 15 (a) (2) of the Interstate Commerce Act:

Wherefore, your petitioners and plaintiffs pray:

1. That this Court notify the Interstate Commerce Commission of the fifing of this petition, and suggest that the [fol. 1175] Commission of its own initiative and volition suspended the effective date of its order pending the result of this proceeding; that in the event of the Commission's failure so to do, this Court temporarily suspend same as authorized by statute, pending hearing for an interlocutory injunction in order that the general and traveling public within the State of Alabama might not suffer irreparable injury and damage, and in order that neither the State of Alabama nor the Public Service Com-

mission (of Alabama) suffer irreparable injury and damage.

- 2. That a three-judge court be assembled, as required by statute, and that a hearing be had at the earliest possible date to the end that irreparable injury and damage may be prevented by the granting of a temporary restraining order and an interlocutory injunction.
- 3. That this proceeding be consolidated with the proceedings instituted by the State of Tennessee and the Commonwealth of Kentucky, or their officials, should this Court deem such appropriate.
- 4. That a permanent injunction be granted restraining the enforcement, operation, and execution of said Orders of the Interstate Commerce Commission, and that same be annulled and set aside.

[fols. 1176-1214] 5. That your petitioners and plaintiffs be granted such other and further relief as may be proper and just in the premises.

Respectfully submitted, State of Alabama Public Service Commission, by William N. McQueen, Acting Attorney General, Forman Smith, Assistant

Attorney General.

Duly sworn to by Forman Smith Jurat omitted in printing.

[fol. 1215]

EXHIBIT "B" TO PETITION

No. 28963 - Sheet 11

Discussion, Ultimate Findings of Fact, and Conclusions Section 13(4) authorizes us to prescribe intrastate rates only when, after full hearing, we find that the existing rates are imposed by authority of the State and cause "undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce." We will consider first whether the first of these provisions has been or is

being violated — that relating to undue or unreasonable advantage, preference, or prejudice.

Eyidence to sustain an order and finding that intrastate rate are violative of section 13(4) in that they unduly prejudice persons or localities must be of equal dignity and probative value with the evidence required to sustain a finding under section 3. Barrett Co. v. Atchison, T. & S. F. Ry. Co., 172 I.C.C. 319, 334. We have frequently found that the evidence to support a finding of undue prejudice and preference must ordinarily establish that such prejudice and preference constitute a source of undue disadvantage to one party and of undue advantage to another. Rates on Raw Dalomite and Fluxing Stone in Ohio, 188 I.C.C. 495, 512. No persons who pay the higher interstate fares and no localities are appearing herein to complain of undue or unreasonable advantage, prejudice, and preference, and as far as this record shows, none have complained to respondents: (119, 120, 145, 174, 181, 182, 206) Respondents do not ask relief for any particular persons or places, but seek a State-wide order. In Rates on Raw Dolomite and Fluxing Stone in Ohio, supra, at 511, 512, the Commission said:

We have no authority to increase intrastate rates unless it is clearly shown that they are working injury to shippers or localities in interstate commerce or discriminate unjustly against such commerce. Dewey Portland Cement Co. v. Alton & E. R. Co., 176 I.C.C. 671. It is also well settled that a mere difference in rates is not enough to establish such facts. It must be shown that the difference in rates, actual or relative, is the moving factor in creating undue prejudice to [fol. 1216] competing shippers in interstate commerce or in casting an undue burden upon or obstructing such commerce. Dewey Portland Cement Co. v. Atchison, T. & S. F. Ry. Co., 174 I.C.C. 87.

That a mere difference in rates does not alone make out a case under section 13(4), see also Intrastate Rates Within Louisiana, 164 I.C.C. 600, 616.

Disparities between the intrastate and interstate rates were shown and are described herein. But it is not shown in what way any passenger or locality in interstate commerce is injured by this disparity, or how they would be benefited by an increase in the intrastate fares.

### No. 28963-Sheet 12

Upon the evidence we find that the intrastate fares here considered are imposed by authority of the State of Alabama; that there is a real and substantial disparity between those fares and the interstate fares applicable in Alabama, the adjoining State of Mississippi, and other southern States; that the interstate fares are not shown to be in excess of maximum reasonable fares; that there is a substantial passenger traffic moving under both intrastate and interstate rates; that interstate and intrastate passengers ride on the same trains in Alabama and receive the same services; and that no injury is shown upon this record to result to the interstate passengers or localities by reason of intrastate passengers being charged lower fares, which would be relieved by increasing the intrastate fares to the interstate level.

Upon these facts it is recommended that the Commission find that the intrastate rates imposed by authority of the State of Alabama have not been shown to cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand.

Turning now to the second portion of section 13(4), which prohibits and makes unlawful any undue, unreasonable, or unjust discrimination against interstate or foreign commerce caused by rates, fares, or regulations imposed by authority of any state: Section 15a, which is intended, among other things, to insure a fair return for carriers, provides that in the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the need, in the public interest, of adequate and efficient railway transportation [fol. 1217] service at the least cost consistent with the furnishing of such service, and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. The Supreme Court, construing the above provision of section 13(4) in

Railroad Comm. of Wisconsin v. Chicago, B. & Q. R. Co., 257 U. S. 563, 585, 586, 589-591, said:

Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system.

When we turn to paragraph 4, section 13, however, and find the Commission for the first time vested with a direct power to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," it is impossible to escape the dovetail relation between that provision and the purpose of section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable, and unjust discrimination against interstate or foreign commerce," within the ordinary meaning of those words.

## No. 28963 — Sheet 13

Congress, in its control of its interstate commerce system, is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonably compensatory return for all the work it does.

\*Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce.

At that time section 15a did not read the same as at present, but its general purpose was to secure to the carriers revenues sufficient to enable them, under honest, efficient, and economical management, to provide in the public interest adequate and efficient transportation service, the same as under the present provisions.

The mere showing of a disparity between interstate and intrastate rates is not, when confined to a specific class [fol. 1218] of traffic, sufficient to support a finding of undue, unreasonable, or unjust discrimination against interstate commerce. Florida v. United States, supra; Florida v. United States, 292 U. S. 1; Utah Edible Livestock Rates and Charges, 206 I.C.C. 309, 312.

When we come to consider the question of whether, under the present conditions confronting respondents, the addition of approximately \$750,000 of annual revenues from Alabama intrastate passenger traffic is necessary in order to enable them to fulfill their national purposes as contemplated by section 15a, and whether the action of the Alabama Public Service Commission in refusing to permit the increase in fares which will produce approximately this amount constitutes an obstruction to interstate commerce. we must unhesitatingly reply in the negative. Respondents' average operating ratio in 1942 was 68. Respondent's contention that "the loss in revenue directly resulting from the low intrastate fares respondents are now required to maintain, which have been proved with almost mathematical exactness, are all that is needed to justify' the finding sought, must be rejected as an inaccurate statement of the law, and out of harmony with the reasoning of the Supreme Court in the opinion last above quand. The failure of respondents to receive this additional intrastate revenue is not at the present time casting any undue burden upon interstate commerce.

Upon the facts found it is recommended that the Commission find that the intrastate fares herein considered, imposed by State authority, do not cause any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.

"Effect of the Stabilization Act.— The Acting Price Administrator, intervener on behalf of himself and the Director of Economic Stabilization, asks that we give effect to the complementary Congressional policies embodied in the Interstate Commerce Act and in the Price Control and Stabilization Acts, by denying increases where these are not shown to be necessary, either to aid in the effective prosecution of the war or to correct gross inequalities, or where the proposed rates are not shown to be just and reasonable.

# No. 28963 — Sheet 14.

In his brief intervener argues that the intrastate basis of 1,65 cents per mile is a maximum reasonable basis for [fol.1219] interstate application. He offered no direct evidence, but relies upon evidence offered by other parties, of record. Upon the evidence herein set forth under the head "Reasonableness of Interstate Fares," we have found

that the interstate fares in Alabama are not shown to be in excess of maximum reasonable fares.

The proposed increased fares have not been shown to be necessary, either to aid in the effective prosecution of the war or to correct gross inequalities.

An order discontinuing the proceeding should be entered.

[fol. 1220]

EXHIBIT."C" TO PETITION

### Before.

# THE INTERSTATE COMMERCE COMMISSION

ICC Docket No. 289631

### ALABAMA INTRASTATE FARES

Intrastate passenger fares in Alabama, Kentucky, North Carolina, and Tennessee, where lower than the corresponding interstate fares, found to cause undue advantage, preference, and prejudice as between persons in intrastate commerce on the one hand and interstate commerce on the other, and unjust discrimination against interstate commerce.

#### PETITION

OF.

# THE ALABAMA PUBLIC SERVICE COMMISSION

# AND

# THE ATTORNEY GENERAL OF ALABAMA

### FOR

# RECONSIDERATION, REHEARING AND FURTHER ORDER BY THE COMMISSION

[fol. 1221] Comes now the Alabama Public Service Commission, a statutory Commission created by legislative action to regulate all public utilities operating within Alabama, all common carriers by railroad operating in Alabama and all truck and bus lines operating in Alabama, and said statutory authority vested in the Alabama Public Service

Commission authorizes it to prescribe and order, among other things, just and reasonable rates, fares and charges, and to order and prescribe proper schedules for the operation of said utilities, railroads and truck and bus lines, and to generally regulate all matters pertaining to the transportation of property and persons within the State of Alabama, and as reasons for requesting the Commission to order the reopening and reconsideration or for further hearing in this cause, your petitioner respectfully says:

I

That on March 25, 1944, the Commission in its report in ICC Docket No. 28963(1); Alabama Intrastate Fares [fol. 1222] Sheet 21, Paragraph 5, therein stated that:

"In accordance with our practice in such proceedings, we shall leave to respondents and the respective State Commissions the matter of adjusting the intrastate fares to conform to these findings. If this is not accomplished within 30 days from the service of this report, consideration will be given to the entry of an appropriate order."

The Alabama Public Service Commission was thereby given the opportunity to adopt and make as its own the findings of the Commission in said report, and said findings are found on Sheet 20 beginning with the 4th paragraph thereon. In said findings the Commission states that the coach fares published by the railroads and suspended by the Alabama Public Service Commission, are just and reasonable fares for the future in Alabama. The same findings are made in respect to certain round trip fares.

11

On Sheet 4, Paragraph 3 thereon, the Commission states:

"As a basis for a finding of violation of Section 13 (4) of the Act, the interstate fares must be shown to be reasonable. Georgia Public Service Commission v. U. S., 283 U. S. 765; U. S. v. Louisiana, 290 U. S. 70. Therefore, before proceeding to a consideration of the evidence submitted in the respective proceedings bear-[fol. 1223] ing directly upon the issues under Section

13 (4), we shall first consider the evidence bearing upon the reasonableness of the interstate fares."

The Commission then proceeds in said report to justify its order under the Georgia Public Service Commission v. United States decision, 283 U. S. 765. The Commission then discusses on Sheets 4, 5, 6, 7, 8, 9, and 10 the level of the interstate fares, and then explains the deficit and increases of respondent; the various difficulties encountered by respondents in the transportation of troops in the Armed Forces of the Nation. The Commission generally tends to show that it has made an investigation of said interstate fares. The statement of the Commission in regard to the reasonableness of the interstate fares that we submit is erroneous, as in no part of the investigation made by the Commission in Docket 28963(1) did the Commission receive: any evidence, nor sid respondents submit any evidence which purports to show that said interstate coach fare of 2.2 cents has been found by the Commission as just and reasonable for the transportation of passengers in coaches in Alabama, or in interstate commerce.

Commission entered into its first comprehensive investigation of interstate fares and charges, said investigation [fol. 1224] being reported in 214 ICC 192. In this investigation, the Commission sought to determine what would be the reasonable interstate fares to apply not only in the Southern District but throughout the United States. In said cause the Commission segregated the Southern District in its report and order and the Commission found that the basic interstate coach fare for application in the Southern District of 1.5 cents per mile was not unreasonable or otherwise unlawful. In the same findings, the Commission found that reasonable interstate maximum coach fares

for the future would be 2 cents per mile.

In Ex Parte 148 the Commission granted a 10 per cent increase on all passenger fares to apply in the movement of passengers in interstate commerce. Ex Parte 148 was not an investigation—it was an application by the rail-carriers of the Nation seeking certain increases in their fares and charges and in their rates applying on the movement of property in interstate commerce purportedly to-defray additional cost of operation brought about by the entry of this Nation into the present World War. In Ex Parte 148 the Commission made no investigation, nor

did it measure in any way any rate, any fare, or any charge, but instead permitted the petitioners to submit a general statement in which it was shown what the increases in operation cost were, and the added cost of materials necessary in the operation of the various railroad systems. On that showing alone, the Commission entered its order granting a 10 per cent increase in passenger fares.

[fol. 1225] We submit to the Commission that the statement that they have made an investigation and measured the 2.2 cent fares applying in interstate commerce in the Southern District is erroneous with the exception of the investigation which it made in Passenger Fares and Sur-

charges, supra, 214 ICC 192, in 1936.

Certainly the Commission cannot justify its findings based upon the earnings of respondents in 1942 compared with the deficit of respondents in 1936. For instance, it is shown in Paragraph 3, Sheet 6, that the Alabama respondents in 1936 had a passenger deficit of \$30,134,958. In the same paragraph it is shown that the Alabama respondents had a passenger income in 1942 of \$31,566,377, or a change in their passenger situation of \$61,701,336 from 1936 to 1942. In the same paragraph the Commission shows average annual deficits for the period beginning with 1936 and ending in 1942.

Alabama patrons who consume passenger transportation certainly cannot be made to reimburse respondents for their alleged deficits. While the Commission has seriously considered the alleged deficits shown from passenger operation over past years, it has ignored the fact that the records show without dispute that the alleged deficits were covered and included in the freight rates imposed upon the people of Alabama, which they have been, and are now paying. The railroads seek not only to regain the alleged deficits, [fol. 1226] but also to profit from present operations, and in addition thereto, retain that part of freight tariff allowed because of past deficits from passenger operations.

The ultimate effect of the Commission's order is to impose two charges for passenger service.

On Sheet 8, Paragraph 2 thereof, the Commission states that respondents have expended large sums of money in remodeling and air conditioning their passenger equipment; that respondents have purchased Diesel-powered locomotives for passenger train service and have modernized a large number of passenger cars, which is admitted by

protestant. On the other hand, the evidence of record is that much of this equipment is operated on streamlined trains and on other through trains and is not available to the average passenger residing in the smaller towns and villages in Alabama as evidenced by the fact, and as shown by the record, that most of the deluxe trains operated in Alabama by respondents do not stop to discharge or take on passengers excepting at a very limited number of Alabama cities, such as Birmingham, Mobile, and Tuscaloosa. Therefore, these monies which were expended by respondents were to make their trains attractive and thereby entice interstate passengers away from competing modes of transportation, and these improvements were not made to accommodate the average passenger in Alabama, nor is the [fol. 1227] "average intrastate Alabama passenger" in position to ride such trains.

In Paragraph 3, Sheet 8, the Commission discusses wartime operation of passenger trains in Alabama and the Commission states that added burdens have been placed on respondents operation due to the number of troop trains. Does the Commission rule that civilian intrastate passengers in Alabama shall defray the added cost of operation occasioned by the fact that the Government of the United States is transporting many thousands of troops by passenger trains and that such movements of military and naval personnel create much deadhead movement, etc.?

On Sheet 9, Paragraph 3 thereon, the Commission states that a great many passenger trains have been added to the operation of respondents, which your protestant admits; however, if the Commission will study the record and particularly Exhibit 18 submitted by respondents, it will find that the only operating witness, who appeared for any respondent before the Alabama Commission in this cause, stated that not a single passenger train had been added for the accommodation of civilian travelers. The same witness stated to the Alabama Commission, as shown in Exhibit 18, that, as a matter of fact, less trains were in operation in Alabama at the time of the hearing before the Alabama Commission than were in operation in 1940; therefore, all added sections to passenger trains [fol. 1228] must have been occasioned by the movement of troops and naval personnel.

Your respondent states that after the Commission had granted the 10 per cent increase on passenger fares in Ex Parte 148, the Alabama Commission immediately issued its order granting the same increase, thereby increasing the coach fares intrastate in Alabama to 1.65 cents per mile, and that the increase was ordered by the Alabama Commission on intrastate fares to defray the added expenses of respondents in the operation of passenger trains and its freight trains, or any of its operation due to war conditions.

It is averred by the Commission, on Sheet 9 in the last paragraph thereon, relative to the availability of 1.25 cent fares for the movement of military and naval personnel traveling from their station on furlough, that respondents have not sought an increase on said fares, which we admit. On the other hand, we point out to the Commission that personnel of the Navy and Army traveling on furlough cannot travel on any trains excepting inferior trains and they are not permitted to travel on the so-called "deluxe streamlined trains." The action of respondents in this respect, by not increasing the fares, is commendable, but not chargeable to Alabama citizens.

[fol. 1229] On Sheet 10, of the report, the Commissionpredicts that there will be a continued increase in passenger revenues during the coming year, and we respectfully refer the Commission to its own records and to the reports issued by the Bureau of Statistics.

#### IV

Respondents, throughout the proceeding before the Alabama Commission and before the Commission in the Section 13(4) investigation, stressed the matter of unification in fares, and respondents stated to the Commission that coach fares were uniform throughout the Nation with the exception of four states in the Southern District, which states denied the increase from 1.65 cents per mile to 2.2 cents per mile for coach passenger fares. However, the Commission disregarded altogether the fact, as shown by the record, that first class passengers traveling in intrastate commerce in Georgia have a fare of 2.2 cents per mile, and the Commission further disregarded the fact, which the record shows, that respondents operating in Georgia com-

plained to the Commission relative to the order issued by the Georgia Public Service Commission in 1936, and that the Commission held an investigation under Section 13(4), and found that the 2 cent fare per mile (now 2.2 cents per mile due to Ex Parte 148 increases) ordered by [fol. 1230] the Georgia Commission for application on first class fares was just and reasonable and the Commission refused to order an increase in said 2 cent first class fare. applying on intrastate commerce in Georgia. The record shows that an example was made by protestants whereby if was shown that a passenger traveling first class 100 miles in Georgia would pay \$2.20, where, on the other hand, if the same passenger traveled today or in the past since 1936 in Alabama, he would pay 3 cents, and since the increase granted by the Commission in Ex Parte 148, would pay:\$3.30. Therefore, there has been no unity at least in. first class fares in the Southern District since 1936. The Alabama intrastate fares have not been uniform, as evidenced by the fact that the I. C., Frisco, and Gulf Mobile never published the 1.5 coach fares, but maintained instead the 2 cent fares.

The Commission discusses on Sheets 12 and 13 its power under Section 13(4). Your protestant agrees with the fact that the Commission may remove undue preference on intrastate fares and remove undue prejudice against interstate commerce, but your protestant states that the power of the Commission beyond that under Section 13(4) is coram non judice and void.

[fol. 1231] VI

That respondents' petition filed with the Commission requesting an investigation named three sections of the Act. (1) Section 3, (2) Section 13, and (3) Section 15-A.

Section 15A authorizes the Commission to prescribe just and reasonable rates and said section states: "In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to

the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

Under this Section, it was obviously necessary for the respondents to show that the alleged loss of revenue in Alabama would impair the ability of respondents to offer efficient railway transportation service in interstate and intrastate commerce. No such evidence was offered. [fol. 1232] Certainly the Commission cannot deem that respondents' revenues are insufficient to marntain efficient, adequate railway transportation service. Protestant's exhibits show without a shadow of a doubt that the earnings of the carriers at the time of the hearing were adequate and would provide sufficient funds not only to maintain efficient and adequate service but, among other things, to pay a considerable amount in excess profits income tax. Therefore, no showing was made whatsoever that the power authorized in Section 15-A should be invoked in this proceeding.

While on the subject, we deem it necessary to point out that while the increased fares, if effective, will cost the intrastate travelers in Alabama some \$750,000 per annum, we believe and insist that this sum will not accrue to the benefit of the respondents. The record discloses that numerous respondents are within the so-called "excess income tax bracket" without this additional revenue, and under the most favorable conditions (under our present income tax laws) would benefit only to the extent of 19 per cent of the \$750,000.

Section 3 of the Act gives the Commission authority to prohibit carriers "to make, give or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transportation point region, district, territory, or any particular description of traffic, [fol.1233] etc." Under this section carriers should have appeared prepared to offer evidence showing what localities were prejudiced, the amount of the prejudice and what localities in Alabama were preferred and the amount involved in said preference. As a matter of fact, every witness who appeared and testified in behalf of respondent was asked if they had received any complaint whatsoever from any locality or any person or persons, and in each and

every instance witnesses stated that they had received no such complaints. It is pertinent to bring to the Commission's attention at this time that in its own decisions the Commission has stated that it is necessary in Section 3 investigations, to show the amount of the prejudice and the amount of the preference, and that respondents under this section were required to name localities, ports, gateways unduly preferred, and to name the localities unduly prejudiced. Therefore, we submit that the Commission erred in ruling and invoking in any way in its report the power contained in said Section 3 of the Act.

On Sheet 14, Paragraph 2 thereon, the Commission states that, "The intrastate fares in each of the states may be used to defeat or break down the interstate fares, and thereby reduce the revenues on interstate traffic," and an example is made by the Commission illustrating how this defeat of interstate revenue may possibly be accomplished. [fol. 1234] Your protestant does not understand how the dearned Commission could arrive at such conclusion. a matter of fact, counsel for respondents admitted in the record that the use of a combination of an interstate fare and an intrastate fare was illegal. Each and every witness testified as to the possibility of such interstate rates and when asked to name one single instance whereby such a scheme or device had been used, each witness stated that he did not know of a single specific instance. first time in our experience that we have ever been confronted with a situation where any tribunal, in the absence of specific evidence, presumed in effect that this was a Nation of law violators. In fact, we carnestly insist that neither the courts of this Nation nor tribunals-will presume that a person will violate the laws, instead the strongest of all legal presumptions is that a person will not violate the laws, and to this end courts have held that, to support a conviction, the evidence must be sufficient to prove such violation beyond a reasonable doubt. This presumption is so fundamental that it does not need citations. The maxim "Injuria non praesumitur"/(a wrong is not presumed) has been applicable in our courts for hundreds of years, numerous cases holding that when misconduct or crime is charged, whether in a criminal or civil suit, whether in a direct proceeding to punish the offender or in some col-[fol. 1235] lateral matter, the accused is presumed to be

innocent until proved guilty. We recetfully submit that this alleged evasion, if it exists at all, may be prohibited by police measures on the part of the respondents.

#### VII

We are unable to understand how the Commission could find that interstate passengers and intrastate passengers are given the same service, particularly in view of the undisputed evidence of witness Ohme commencing on page 350 of the record.

Previously in the record, it was shown that Southern Railway train No. 16 enters Alabama with first stop at Sheffield, where the witness commenced his journey; that witness was seated in a hot coach without air conditioning and found that air conditioned cars carrying only interstate passengers were closed and locked to intrastate passengers; therefore, the witness, being an intrastate passenger, was required to ride in the hot coach. Particular attention is called to the statements of the flagman and conductor of this particular train as stated on page 351 of the record. Further attention is directed to the testimony of witness Ohme (Record page 340), in which he stated that 28 of the [fol. 1236] 56 trains which he inspected were loaded beyond seating capacity, and that 1,097 passengers were standing on said trains. It is further called to the attention of the Commission that the inspections made by witness Ohme were not made during week-ends and were not-special inspections, but inspections made in the ordinary discharge of his duties and under usual travel circumstances. The testimony of witness Tobias (Record page 356) shows that this witness travels continuously in the discharge of hisduties and that for three months previous to the hearing held by the Commission witness had been unable to find a seat in his travels between Mobile and Montgomery. This witness also travels only during the week and not on weekends.

On Sheet 15, the last paragraph thereon, the Commission again refers to Section 15-A and the cost of inilitary travel. Does the Commission désire to state that military travel does not travel on fares which are less than the cost to a civilian passenger? As a matter of fact, the record shows, and the Commission states in its report, that all movement of Army and Naval troops move under the so-called equalization agreement whereby military and naval passengers.

travel under land grant rates, whether the rail line on which they travel is a land grant road or not, and that the fare assessed on such military and naval travel is calculated on the longest land grant rate applicable in the district, and [fol. 1237] that all lines in the Southern District meet such land grant rates under the so-called equalization agreement.

In conclusion, we would like to point out what is generally known not only to the Commission and to the carriers, but to the general public at large, that of all industries which have waxed fat and are profiting most by the present war emergency, the railroads are among those at the top of the list. We do not believe that either cost of operation or revenue or any other condition is sufficient at this time to justify the exploitation of the residents of Alabama in the form of an approximate 33½ per cent increase in intrastate passenger coach fares, particularly in view of the fact that in a majority of cases, of sums so exploited, the railroads will ultimately be able only to retain approximately 19 per cent thereof, under most favorable conditions, due to the present income tax form.

Wherefore, petitioner prays that the Commission reopen this proceeding for reargument and reconsideration, and thereafter issue a report in the nature of the minority report of Commissioner Splawn and other commissioner joining him, and order a dimsissal of procedure. Protestant states that it believes, in view of the above, the Commission will reopen this proceeding for reconsideration [fol. 1238-1240] and rehearing. However, in the event the Commission should deny this petition, it is requested that such order as may issue be made effective thirty days after service thereof, to permit the protestant to either follow the instructions or suggestions of the Commission, or apply

for judicial relief therefrom.

Respectfully submitted, Alabama Public Service Commission, J. G. Bruce, Practitioner of Record; William N. McQueen, Acting Attorney General, State of Alabama; Forman Smith, Assistant Attorney General, State of Alabama.

I do hereby certify that I have this day deposited in the United States mail, properly stamped and addressed, a copy of the above and foregoing, to every party of record This the 24th day of April, 1944.

Forman Smith, Assistant Attorney General, State of Alabama.

### EXHIBIT "E" TO PETITION

### Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of May A. D. 1944.

No. 28963

Alabama Intrastate Fares

No. 29000

Kentucky Intrastate Fares

No. 29036

North Carolina Intrastate Coach Fares

No. 29037.

### Tennessee Intrastate Fares

These proceedings having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission, on March 25, 1944, having made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and

It appearing: That as set forth in said report, and in accordance with the practice in such proceedings, the Commission left to respondents berein and the respective State Commissions, for a period of 30 days from March [fol. 1242] 30, 1944, the date of service of said report, the matter of adjusting the intrastate passenger fares under consideration in these proceedings to conform to the findings and conclusions made in said report, and that no such adjustment of the said intrastate fares has been made of authorized by the respective State Commissions:

It is ordered, That respondents in each of these proceedings, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before July 1, 1944, upon notice to this Com-

mission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to abstain from practicing the undue prejudice and preference and the unjust discrimination found in said report to exist.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before July 1, 1944, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply, passenger fares for intrastate transportation in the respective States which shall remove the undue prejudice and preference and the unjust discrimination found in said report to exist; pro-[fols. 1243-1248] vided, that the resulting aggregate charge made by any of said respondents for intrastate transportation in any of the States shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondent for interstate transportation to from, or through such State.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

Secretary.

[fols. 1249-1293] IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION

### No. 706

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, Plaintiffs.

VS.

United States of America and Interstate Commerce Commission, Defendants

# No. 707

THE STATE OF TENNESSEE and PORTER DUNLAP et al. Constituting the Railroad and Public Utilities Commission of the State of Tennessee, Plaintiffs,

VS.

United States of America and Interstate Commerce Commission, Defendants

#### No. 708

COMMONWEALTH OF KENTUCKY, AND RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

VS.

UNITED STATES OF AMERICA, Defendant

# ORDER COVERING THREE-JUDGE COURT

Pursuant to section 47 Title 28 of the United States Code, on an application made to me for preliminary or interlocutory injunction, it appearing that the Bill of Complaint in each of the above three cases is brought to enjoin the enforcement of an order of the Interstate Commerce Commission, I hereby call to my assistance for the hearing of the application and cause, the Honorable Elwood Hamilton, Judge of the Circuit Court of Appeals for the Sixth Circuit, and the Honorable Mac Swinford, District Judge of the Eastern and Western Districts of Kentucky.

This 20th day of June, 1944.

Shackelford Miller, J., United States District Judge.

[fol. 1294] IN THE UNITED STATES DISTRICT COURT

### No. 706

THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION,
Plaintiffs,

VS.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

Answer of United States of America-Filed July 7, 1944

Now comes the United States of America, a defendant herein, by counsel, and in answer to the complaint says:

I

Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, has filed a motion to intervene as a plaintiff in this case and has also filed an intervening complaint seeking to have the order of the Interstate Commerce Commission here involved set aside.

#### П

A situation is thus presented where one Government agency is seeking to intervene as a party plaintiff in this case and another Government agency, the Interstate Commerce Commission, is a defendant in the same case. Under these circumstances, and in view of the fact that both Government agencies will have an opportunity to present their respective position through their own course, the United States has determined to remain neutral in these proceedings in the District Court, without prejudice to its supporting the position of one or the other agency in any appeal which may be taken from the decree of this court.

[fol. 1295] II

Accordingly, the United States neither admits nor denies any of the allegations of the complaint of the above plaintiffs or the intervening complaint of the Economic Stabilization Director.

Eli H. Brown, III, United States Attorney; Robert L. Pierce, Special Assistant to the Attorney General.

### Certificate of Service

I hereby certify that a copy of the above answer of the United States has been served upon each of the following named counsel this 7th day of July, 1944:

William N. McQueen, Esq.

Acting Attorney General of Alabama

Montgomery, Alabama

Forman Smith, Esq.

Assistant Attorney General of Alabama

Montgomery, Alabama

Allen B. Crenshaw, Esq.

Interstate Commerce Commission

Washington, D. C.

Charles Clark, Esq.

Southern Railway System

Washington, D. C.

M. D. Miller, Esq.

Federal Office Building, No. 1 \*

Washington, D. C.

Frank W. Gwathmey, Esq.

Shoreham Building

Washington, D. C.

E. D. Mohr, Esq.

Louisville & Nashville RR Company

Louisville, Kentucky

Eli H. Brown, III, United States Attorney.

[fol. 1296] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 706

THE STATE OF ALABAMA, ET AL., Plaintiffs,

VS.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

Answer of Interstate Commerce Commission—Filed July
10, 1944

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-entitled action, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' complaint contained, and in the complaint of intervenors, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the allegations of paragraphs I, II, III, XLV, IX and X of plaintiffs' complaint, the Commission admits court jurisdiction of the action herein and of the parties, thereto.

11

The Commission admits that the plaintiffs herein have a legal right to maintain this action, and that intervenors are proper parties thereto.

Ш

Further answering other allegations of the complaints, the Commission alleges that proceedings, directly and im-[fol. 1297] mediately concerned in the orders herein involved, were instituted upon the filing of petitions in the Commission, by various railroads operating in the State of Alabama, to wit: the Alabama Great Southern, the Atlanta, Birmingham and Coast, the Atlantic Coast Line, the Central of Georgia, the Gulf, Mobile and Ohio, the Illinois Central, the Louisville and Nashville, the Nashville. Chattanooga and St. Louis, the St. Louis and San Francisco, the Seaboard Air Line, the Southern, the Tennessee, Alabama and Georgia, and the Western of Alabama, in July, 1943, complaining that intrastate coach passenger fares, to, from, and between points within the State of Alabama, except as applied to and by the Gulf, Mobile and Ohio and Illinois Central Railroads, other than in instances where those railroads meet lower rates of competing lines, were unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce, in violation of Section 13 (3) and (4) of the Interstate Commerce Act, seeking under Commission authority, to have such advantage, preference, prejudice, or discrimination removed, as might be found to exist, and to determine what fares and charges, if any, or what maximum or

minimum, or maximum and minimum fares and charges should be prescribed, to remove such advantage, preference, prejudice, or discrimination; said petitions were given Docket No. MC-28963 and hearings were held thereon before an examiner of the Commission at which time evidence was received as submitted by the various parties interested therein, including plaintiffs herein, and thereafter the several parties to the proceedings filed briefs with, and orally argued before the Commission, matters involved in said proceedings, following which the Commission entered its report of March 25, 1944; thereafter plaintiffs filed [fol. 1298] petition for reopening, reargument, and reconsideration of the report of March 25, 1944, which petition was denied by order dated May 8, 1944; under corrected order issued May 24, 1944, rail carrier respondents in the above proceedings were required to establish on or before July 1, 1944, later extended to August 1, 1944, and to thereafter maintain and apply, passenger fares for intrastate transportation in Alabama, and in the States of Kentucky. North Carolina, and Tennessee, also involved in said proceedings under the same report and order, on a basis no lower than the passenger fares presently maintained and applied by the respective respondents, for like accommodations in interstate transportation to, from, and through the said states, and providing that the resulting aggregate charge, made by any of said respondents for intrastate transportation in any of the said states, shall not exceed the aggregate charge made for like accommodations for a like distance by the same respondents in interstate transportation to, from, or through such states.

The Commission further alleges that the proceedings, report, and orders here involved, indirectly and collaterally relate to previous consideration; decisions, and orders of the Commission, in respect to the determination of reasonable passenger fares in interstate commerce, particularly with reference to such fares in Southern Passenger Association territory, generally located east of the Mississippi River and south of the Ohio and Potomac Rivers, such consideration and decisions covering a period of many years prior to the report involved in this action, a summary of that previous consideration, and of reports and orders issued in connection therewith, being set forth in the Commission report of March 25, 1944, 258 I.C.C. 133, at pages

134, 135, 136, and 137, under the heading of "History of Rail Fares." Such interstate fares, so determined by the [fol. 1299] Commission as reasonable, provide the basis of comparison, standard or relation to the intrastate fares here involved. Previous Commission consideration of such interstate fares discloses that passenger fares in said south ern territory for many years, up to June 10, 1918, were generally 2.5 cents per mile in all classes of equipment, on which last-named date, the Director General of Railroads increased the fare to 3 cents per mile in all classes of equipment, which said increased fare remained in effect, except that from June 10 to November 30, 1918, an additional charge of 16% percent of the one-way fare was assessedfor travel in sleeping and parlor cars, until August 25, 1920, when fares generally we're raised to 3.6 cents per mile in all classes of equipment, plus a surcharge in sleeping and parlor cars; that during 1932 and 1933 certain rail carriers operating in southern territory experimented with lower fares, in attempts to attract passenger business in competition with private automobiles and busses, as set forth in said report of March 25, 1944, at pages 134 and 135.: the said higher passenger fares of 3.6 cents per mile, established August 26, 1920, with exception of the experimental lower fares established by certain rail carriers, remained in effect until February 28, 1936; when the Commission by its report in Passenger Fares and Surcharges, 214 I.C.C. 174, reviewed railroad passenger fares throughout the nation, found the basic fares to be unreasonable, and prescribed maximum reasonable fares of 2 cents per mile, oneway and round-trip in coaches, and 3 cents per mile one-way and round-trip in Pullman cars, without prejudice to the maintenance of lower fares in coaches or Pullmans, and finding that the Pullman surcharge was unreasonable, re-Quiring the same to be canceled, and finding that the existing experimental fares in southern territory were not unreasonable or otherwise unlawful; that on November 15, 1937 carriers maintaining the experimental coach fares [fol. 1300] of 1.5 cents, increased that fare to 2 cents per mile, but restored the 1.5-cent fare on January 15, 1939, with certain southern lines, including Illinois Central. Mobile and Ohio, St. Louis-San Francisco, and Norfolk and Western Railway, which said lines retained the 2-cent basis, with some exceptions in meeting competition of other lines.

In a proceeding designated as Ex Parte 148, instituted at the instance of the railroads, the Commission by order of January 21, 1942, authorized a 10 percent increase in passenger fares, held to be reasonable and otherwise lawful, and necessary to enable the rail carriers to render adequate and efficient transportation service during the national emergency, the said report being entitled Increased Railway Rates, Fares, and Charges, 1942, 248 I.C.C. 545, 565, 566. Under the 10 percent increase of passenger fares the reestablished coach fares of 1.5 cents, which had remained in effect until February 10, 1942, became 1.65 cents, and fares of 2 cents became 2.2 cents and fares of 3 cents became 3.3 cents, with round-trip fares modified to reflect the increases in the one-way fares, such increased fares upon various subsequent dates having also become effective on intrastate traffic in all states. Upon petition of rail carriers in southern territory filed July 14, 1942, the Commission authorized such carriers to increase the lower interstate passenger fares in coaches in that territory to 2.2 cents a mile, the order being entered on August 1, 1942, and such increased fares were published to become effective October 1, 1942, and have since remained in effect on interstate traffic. Thereafter, with the approval of the regulatory authorities of the States of Florida, Georgia, Louisiana, Mississippi, Virginia, and South Carolina, the intrastate one-way and round-trip coach fares and the round-trip fares in sleeping and parlor cars, were increased to the respective levels of the corresponding interstate. fares, and the regulatory authorities of Alabama, North Carolina, Tennessee and Kentucky declined to authorize [fol. 1301] the increases, sought by the rail carriers, in oneway and round-frip coach fares, and Alabama and Tennessee also declined to authorize increase in the round-trip fares in sleeping and parlor cars. The refusal of the States of Alabama, North Carolina, Tennessee, and Kentucky to authorize the increases of passenger fares to the level of the interstate fares, was the basis of petitions of rail carriers, in the proceedings herein involved, that the resulting differential in favor of intrastate fares, as compared to the interstate fares, results in a violation of Section 13.(3) and (4) of the Act.

The report of March 25, 1944, embraced, considered, and decided the subject of proceedings in No. MC-28963, Alaz

bama Intrastate Fares, and also No. MC-29000, Kentucky Intrastate Fares, No. MC-29036, North Carolina Intrastate Coach Fares, and No. MC-29037, Tennessee Intrastate Fares, and found, (1) that interstate one-way and roundtrip coach fares in effect to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee, and interstate round-trip fares in sleeping and parlor cars in effect to, from, and through points in Alabama and Tennessee are just and reasonable, (2) that intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina; and Tennessee, with certain designated exceptions, and intrastate round-trip fares in sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding fares applicable interstate, and intrastate generally throughout southern territory, except as to the states named, (3) that conditions affecting the transportation of passengers in coaches in said four states, and in sleeping and parlor cars in Alabama and Tennessee, intrastate; on the one hand, and interstate to, from and through those respective states, on the other, are substantially similar. (4) that interstate passengers in these states travel in the same trains, and generally in the same cars with intrastate passengers, but are forced to pay higher fares [fol. 1302] than the intrastate passengers for like services, to the undue and unreasonable advantage and preference of intrastate passengers; and the undue and unreasonable disadvantage and prejudice of interstate passengers, (5) that respondent rail carriers' revenues under the lower intrastate fares, are less by at least \$725,000 per annum in Alabama, \$500,000 in Kentucky, \$525,000 in North Carolina, and \$525,000 in Tennessee, than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues, required to enable respondents to render adequate and efficient transportation service, and (6) that the maintenance of such intrastate fares, to the extent that they are lower than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable and

unjust discriminations against interstate commerce, and that this unlawfulness should be removed by increasing the said intrastate fares in the respective states to the level of the corresponding interstate fares contemporaneously maintained by respondent carriers, to, from, and through such states, provided that the aggregate charge made by any of respondents for the intrastate transportation in any of the states, shall not exceed the aggregate charge made for like accommodations for a like distance by the same respondents for interstate transportation to, from, or through such state. These findings were made without prejudice to the right of authorities of the affected states, or of any interstate party, to apply for modification thereof as to any specific interstate fare, on the ground that such fare is not related to interstate fares in such a way as to contravene the provisions of the Interstate Commerce Act. [fol. 1303] The Commission further alleges that the findings and conclusions in said report of March 25, 1944, were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid, and that, in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to the said proceedings by their respective counsel.

The Commission further alleges that said report and order, above referred to, was not made or entered either arbitrarily or unjustly, or without proof or contrary to the relevant evidence, or without evidence to support it, that in making said report and order the Commission did not exceed the authority conferred upon it by law, and denies each of and all of the allegations to the contrary contained in the complaints.

Except as herein expressly admitted, the Commission denies the truth of each of and all of the allegations contained in the complaints, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in the said report of March 25, 1944, above referred to.

V-wa

The Commission specifically denies the allegations contained in paragraphs YY, XIII, XIV, and XV.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

> Interstate Commerce Commission, by Allen Crenshaw, Attorney. Daniel W. Knowlton, Chief Counsel, of Counsel.

[4 fol. 1304] Duly sworn to by Claude R. Porter. Jurat omitted in printing.

[fol. 1305] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 706

THE STATE OF ALABAMA, and Public Service Commission, Plaintiffs,

.

THE UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION, Defendants.

Answer of Rail Lines, Intervening Defendants—Filed July 12, 1944

Come now, in due season, rail lines operating in the State of Alabama, who are intervening defendants herein, and file this, their joint and several answer to the complaint or petition herein filed by the State of Alabama and Public Service Commission.

4

These intervening defendants hereby adopt the answer herein filed on behalf of Interstate Commerce Commission, a defendant in said cause, as their answer in the same manner and to the same extent as though each paragraph thereof were herein fully set out.

#### TI

Eurther answering, these defendants specifically deny the averments contained in paragraphs 11, 12, 13, 14, 15 and 16.

[fols. 1306-1307] Wherefore, having answered, these intervening defendants pray that the petition or complaint herein be dismissed.

E. A. Smith, Illinois Central Railroad Co., Chicago, Illinois. W. L. Grubbs, Louisville & Nashville RR. Co., Louisville, Ky. Y. D. Lott, Jr., Gulf, Mobile & Ohio Railroad, Mobile, Ala. F. W. Gwathmey, 1010 Shoreham Bldg., Washington, D. C. Charles Clark, Southern Railway Office Bldg., 15th & K Streets, N. W., Washington 13, D. C.

[fol. 1308] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 706

THE STATE OF ALABAMA, and Public Service Commission

THE UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION, Defendants

MOTION FOR LEAVE TO INTERVENE-Filed July 12, 1944

Come now, under and by virtue of Title 28, U. S. C. Section 45a, The Alabama Great Southern Railroad Company, Atlanta, Birmingham and Coast Railroad Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, (M. P. Calloway, Trustee); Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company, The Nashville, Chattanooga & St. Louis Railway, Seaboard Air Line Railway Company (L. R. Powell, Jr. and Henry W. Anderson, Receivers), Southern Railway Company, St. Louis San Francisco Railway Company, (J. M. Kurn and John G. Lonsdale, Trustees), and The Western Railway of Alabama, and move the court for leave to appear and intervene in the above-stated case and to become parties defendant thereto in order to protect their rights involved in said case.

[fol. 1309] Each of said movants is and for some years has been a corporation, or receivers of a corporation, en-

gaged in operating a railroad within the State of Alabama, and by its own rails or in connection with the rails of some one or more of the other movants engaged in operating a line of railroad between points within the State of Alabama and points in other states within Southern territory; Southern territory is familiarly described and known as embracing those states lying south of the Ohio and Potomac Rivers and east of the Mississippi River;

And as such corporations, or receivers thereof, each of said movants has operated and is now operating as a common carrier of passengers by railroad intrastate within the State of Alabama and interstate within Southern territory; and as such has been and is subject to the provisions of the Act of Congress known as the Interstate Commerce Act;

And said movants, jointly and severally, are vitally interested in the subject matter of this complaint. They are the common carriers by railroad operating within the State of Alabama upon whose petition the Interstate Commerce Commission instituted the investigation docketed No. 28963 in which the report of March 25, 1944, and the orders of May 8, 1944, set out as exhibits A, D, E, and F to the complaint herein, respectively, were made and issued.

[fol. 1310] And each of said movants desires to here appear and intervene on behalf of defendants, United States of America and Interstate Commerce Commission, and to answer the bill of complaint and participate in the trial thereof as a party defendant.

E. A. Smith, Illinois Central System, 135 East 11th Place, Chicago 5, Ill; W. L. Grubbs, Louisville & Nashville R. R. Co., Louisville 1, Ky.; Y. D. Lott, Jr., Gulf, Mobile & Ohio R. R. Co., Mobile 5, Ala.; F. W. Gwathmey, 1110 Shoreham Bldg, Washington 5, D. C.; Charles Clark, Southern Railway Office Bldg., 15th & K Streets, N. W., Washington 13, D. C., Attorneys for Movants.

[fols. 1311-1312]

ORDER

The foregoing motion read and considered; let the same be filed; and it is further ordered that the motion be allowed and that the movants, and each of them, be and they are hereby inade parties defendant in the above-entitled cause.

Shackelford Miller, Jr., United States District Judge.

This 12th day of July, 1944.

[fol. 1313] IN UNITED STATES DISTRICT COURT

Nò. 706

THE STATE OF ALABAMA and Public Service Commission, Plaintiff, .

VS.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendant

No. 707

THE STATE OF TENNESSEE, et al., Plaintiff,

VS.

UNITED STATES and THE INTERSTATE COMMERCE COMMISSION,
Defendant

No. 708

\*Commonwealth of Kentucky and Railroad Commission of Kentucky, Plaintiff,

UNITED STATES OF AMERICA, Defendant

.Consolidated:

ORDER ON MOTION TO DISMISS COMPLAINT OF FRED M. VINSON

The motion of the Railroad Intervening Defendants to strike the complaint of Vinson, Director, having duly come on this day for hearing; and attorneys for the interested parties having been heard; and the same duly considered by the Court:

It is ordered that the first paragraph of the prayer, numbered "First", of said Director Vinson's complaint.

and the paragraph numbered "Seventeen" of said complaint and the affidavit of one Whitnack, together with the tables and graph thereto attached; Be and the same are stricken from said complaint—

It is further ordered, that except as herein sustained said motion Be and the same is hereby overruled.

Elwood Hamilton, U. S. Circuit Judge; Shackelford Miller, Jr., U. S. District Judge; Mac Swinford, U. S. District Judge.

In Open Court This 17th day of July 1944.

[fol. 1314] IN UNITED STATES DISTRICT COURT

No. 706

THE STATE OF ALABAMA and Public Service Commission

United States of America and Interstate Commerce Commission

No. 707

THE STATE OF TENNESSEE et al.

VS.

UNITED STATES and the Interstate Commerce Commission

No. 708

COMMONWEALTH OF KENTUCKY and RAILROAD COMMISSION OF KENTUCKY

VS.

UNITED STATES OF AMERICA

### ORDER OF SUBMISSION

The above three cases were called for hearing on July 17th, 1944, before a three Judge court, as follows: Judge Elwood Hamilton, U. S. Circuit Judge for the Sixth Circuit; Judge Shackelford Miller, Jr., District Judge of the United States District Court for the Western District of Kentucky; Judge Mac Swinford, United States District Judge for the Eastern and Western Districts of Kentucky.

The cases were, by agreement, consolidated for hearing and were then heard together. The following counsel appeared:

Eldon S. Dummit, Atty. Gen. of Ky.; M. B. Holifield, Ass't Atty. Gen.; Jack E. Fisher—Frank L. McCarthy for Railroad Commission of Ky.; J. E. Marks, attorney for intervenors, plaintiff; Leon Jourolmon, Jr., for State of Tennessee; Forman Smith, Assistant Atty. General, for State of Alabama; M. D. Miller, for Economic Stabilization Director and Price Administrator, intervening plaintiff; Allen Crenshaw, for Interstate Commerce Commission; Chas. Clark, Frank W. Gwathmey, W. L. Grubbs, attorneys for railfoads, intervening defendants.

The case was argued by counsel for the respective parties. Arguments were not completed and court adjourned at 5 P. M., till 9 A. M., July 18th 1944. On July 18th 1944 court reconvened, arguments were resumed, briefs were [fol. 1315] filed and the cases submitted.

Elwood Hamilton, Judge, United States Circuit Court of Appeals for the Sixth Circuit; Shackelford Miller, Jr., Judge, United States District Court for the Western District of Kentucky; Mac Swinford, Judge, United States District Court for the Eastern and Western Districts of Kentucky.

July 18th, 1944.

[fol. 1316] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 706 Civil

THE STATE OF ALABAMA, and Public Service Commission, Plaintiffs,

THE UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION, Defendants

Motion to Dismiss Complaint of Fred M. Vinson, Director of the Office of Economic Stabilization—Filed July 17, 1944

Come now, in due season, the railroad intervening defendants in the above-stated cause, and file this, their mo-

tion to dismiss the complaint of Fred M. Vinson, Director of the Office of Economic Stabilization, an intervening party plaintiff, upon the following grounds:

I

Said complaint of Director Vinson fails to state a claim upon which relief can be granted in this cause.

### II

In the first paragraph of the prayer of the complaint of said Director Vinson, he asks "that the constitutional and judicial matters be tried de novo with respect to the allegations of paragraph 17 hereof."

No intervening party-plaintiff may assert an interest or raise an issue greater or beyond the scope of the interest and issues raised in the original suit. In the proceedings in this cause before this Court the original plaintiffs are not entitled to a trial de novo; said original parties plaintfols. 1317-1360] tiff are limited to the evidence and record which was before the Interstate Commerce Commission in the proceeding before it giving rise to the order attacked in the original suit in this Court. Said complaint of Director Vinson undertakes to inject new and additional evidence to that which was before the Interstate Commerce Commission in Dockets 28963 (Alabama), 29000 (Kentucky), and 29037 (Tennessee); and seeks a trial denovo in this Court.

Wherefore, the railroads who are intervening defendants in this cause, move the dismissal of said Director Vinson's complaint, or so much thereof as unduly broadens the interest and issues raised in the original complaint,—that is to say, specifically, strike paragraph numbered 17 and the affidavit of Doris S. Whitnack and its accompanying tables referred to in said paragraph 17, and strike the first paragraph from the prayer of said Director Vinson's complaint numbered "First."

E. A. Smith, I. C. RR. Co., Chicago, Ill. W. L. Grubbs, L. & N. RR. Co., Louisville, Ky. Y. D. Lott, Jr., G. M. & O. RR., Mobile, Ala. F. W. Gwathmey, 1110 Shoreham Bldg., Washington, D. C. Charles Clark, Southern Ry. Office Bldg., 15th & K Sts., N. W., Washington 13, D. C., Attorneys for the Railroad Intervening Defendants.

# [fol. 1361] Before the Interstate Commerce Commission

### Docket No. 28963

# ALABAMA INTRASTATE FARES

Offices of the Alabama Public Service Commission, Montgomery, Alabama, Monday, June 28, 1943

Met, pursuant to notice, at 9:30 a. m.

.Before: C. E. Stiles, Trial Examiner

#### APPEARANCES:

- L. L. Oliver, c/o Southern Railway Company, Washington, D. C., appearing for Southern Railway Company, the Alabama Great Southern Railway Company, and Respondents generally.
- Chas. P. Reynolds, 1110 Shoreham Building, Washington, D. C., appearing for the Atlantic Coast Line Railroad Company, the Central of Georgia Railway Company, the Nashville, Chattanooga & St. Louis Railway Company, the Seaboard Air Line Railway Company, and the Western Railway of Alabama, Respondents.
- William C. Burger, 908 W, Broadway, Louisville, Kentucky, appearing for the Louisville and Nashville Railroad Company.
- James B. Gray, 135 East 11th Place, Chicago, Illinois, appearing for the Illinois Central Railroad Company, Respondent.
- Y. D. Lott, Jr., 104 St. Francis Street, Mobile, Alabama, appearing for the Gulf, Mobile & Ohio Railroad Comfféls, 1362-1364] pany, Respondent.
- W. H. Amerine, Montgomery, Alabama, appearing for the Seaboard Air Line Railway Company, Respondent.
- Hugh White, President, W. C. Harrison, and Gordon Persons, Associate Commissioners, J. G. Bruce, Chief of Transportation Bureau, and Norwood Johnson, Rate Clerk, Montgomery, Alabama, appearing for the Alabama Public Service Commission.

- W. R. McDonald, Chairman, and A. J. Young, Rate Expert, and Crawford L. Pilcher, appearing for the Georgia Public Service Commission, Atlanta, Georgia.
- J. E. Marks, 145 East High Street, Lexington, Kentucky, and Frank L. McCarthy, Frankfort, Kentucky, appearing for the Kentucky Railroad Commission.
- M. D. Miller, Room 4225 Federal Office Building, Washington, D. C., appearing for the Office of Price Administration, and Director of Economic Stabilization.
- James E. Burkett, 230 City Hall Building, Montgomery, Alabama, appearing for the Montgomery Chamber of Commerce, et al.

## [fol. 1365]

#### PROCEEDINGS

Examiner Stiles: Let us come to order.

The Interstate Commerce Commission has assigned for hearing at this time and place, Docket No. 28963, Alabama Intrastate Fares. When entering your appearance, please state whether or not you have been admitted to practice before the Interstate Commerce Commission.

Who appears for Respondents?

Mr. Oliver: L. L. Oliver, Southern Railway Company, Washington, D. C., for Southern Railway Company, the Alabama Great Southern Railway Company, and Respondents generally.

Mr. Reynolds: C. P. Reynolds, Washington, D. C., for the Atlantic Coast Line Railroad Company, the Central of Georgia Railway Company, the Nashville, Chattanooga & St. Louis Railway, the Seaboard Air Line Railway, and the Western Railway of Alabama, Respondents.

Mr. Gray: James B. Gray, 135 East 11th Place, Chicago 5, Illinois, for the Illinois Central Railroad Company: I am a registered practitioner.

Mr. Oliver: I should have stated that I am a registered practitioner.

Mr. Lott: Y. B. Lott, Jr., 104 St. Francis Street, Mobile, Alabama, appearing for the Gulf, Mobile & Ohio Railroad Company. I am a registered practitioner.

Mr. Oliver: Mr. Examiner, I have a letter from Mr. William C. Burger, Attorney for the Louisville & Nashville Railroad Company, asking me to enter his appearance, that he is on his way here, and he would be here

on time, unless his train happened to be late. So he will be in a little later and will enter his own appearance, but

I am appearing at his request.

Mr. Pilcher: Mr. Crawford Pilcher, representing the Georgia Public Service Commission. Mr. Young here is rate expert for the Georgia Public Service Commission. We are not parties, but we are appearing as parties at interest. My application is pending with the Commission for a certificate to practice.

Examiner Stiles: You have filed an intervention?

Mr. Pilcher: No, sir.

Mr. Marks: The Kentucky Commission is interested here as an observer. If we could intervene, we would like to do so, Mr. Frank L. McCarthy, Chairman, and J. E. Marks, Commerce Counsel.

Examiner Stiles: Do you have the petition of intervention?

Mr. Marks: No, it has not been prepared. At the time, I started we thought we would not enter an appearance.

Examiner Stiles: In this type of proceeding, the proper manner of intervention is by a petition.

Mr. Marks: I would like to have the privilege of filing that within ten days if that could be done.

Examiner Stiles: Can you not file it sometime during the [fol. 1367] course of the hearing?

Mr. Marks & I will try to.

Examiner Stiles: Please.

Mr. Picher: We would like to reserve the same right. The Chairman of our Commission, Mr. McDonald, I failed to state is here for the Georgia Public Service Commission.

Examiner Stiles: If possible, file your petition during the course of the proceeding, and then we can pass on it on the record.

Are there any appearances in support of the carrier-respondents?

Off the record.

(Discussion had off the record.)

Mr. White: Mr. Examiner, at this time, with your permission, I will enter appearances for the Alabama Public Service Commission. Hugh White, President, W. C. Harrison, Associate Commissioner, Gordon Persons, Associate Commissioner, and J. G. Bruce, Chief of the Transportation

Bureau. Mr. Bruce will conduct most of the examination on behalf of the Alabama Commission, but probably the Commissioners will also want to ask some questions, particularly on cross-examination of the Petitioner's witnesse.

Examiner Stiles: This, I take it, will be in opposition to

the petition?

Mr. White: Of the carriers.

[fol. 1368] Examiner Stiles: Yes,

Mr. White: Yes, that is correct.

Examiner Stiles: Are there any other appearances in opposition?

Mr. Miller: I would like to enter the appearance of M. D. Miller, appearing on behalf of the Price Administrator, and the Director of Economic Stabilization. My address is 4225, Federal Office Building, No. 1, Washington, D. C.

I am not admitted to practice before the Commission, but the Commission does not consider, that necessary. I have here a petition for intervention, the original of which is with the Examiner: If any other parties would care to

have a copy, I would be glad to give it to them.

Examiner Stiles: This petition of the Office of Price Administration is granted. This is an investigation instituted by the Interstate Commerce Commission upon a petition by the rail carriers operating in Alabama, to determine whether the refusal of the Alabama Public Service Commission to authorize or permit the application to the transportation of passengers traveling intrastate in Alabama, of fares and charges corresponding to those established for interstate application on October 1, 1942, causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand; [fol. 1369] or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and to determine what fares and charges, if any, or what maximum or minimum or maximum and minimum fares and charges shall be prescribed to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

The carriers may call their witness.

Mr. Oliver: Will you come around, Mr. Aiken! Off the record, Mr. Examiner.

Examiner Stiles: Suspend the record.

(Discussion had off the record.)

# E. N. Aiken was sworn and testified as follows:

Direct examination.

# By Mr. Oliver:

Q. Please give your name and state your residence.

A. E. N. Aiken, Atlanta, Georgia, Assistant Passenger Traffic Manager, Southern Railway System Lines.

Q. State how long you have held your present position and, very briefly, your previous experience in passenger traffic matters.

Mr. Bruce: We will waive that and admit his qualifica-

Mr. Oliver 1 think you might state for the record, Mr.

Aiken, your experience.

The Witness: I have been Assistant Passenger Traffic Manager since April 15, 1931. My service with the Passen-[fol. 1370] ger Traffic Department, Southern Railway System Lines, dates from August 1, 1902; prior to that date I was in the service of the Passenger Traffic Department of New York Central Lines for several years with head-quarters at New York. All of my railroad career has been spent in the Passenger Traffic Departments of the railroads named.

Q: On whose behalf are you testifying in this proceeding?

A. Southern Railway Company was designated to act as Chairman of the Railroad Committee in presenting this case and I am speaking for all of the railroads operating within the State of Alabama to which the Alabama Public Service Commission has denied authority to put their intrastate passenger fares on the interstate basis in accordance with passenger tariffs filed with it to become effective December 1, 1942.

Q. Before proceeding with your testimony I think it would be well to place before the Examiner a map showing the railroad lines in Alabama. You have, I believe, such a map which you wish to offer as an Exhibit.

A. Yes.

Q. Will you identify the map, please, and state in what

year it was published?

A. I file as Exhibit No. 1, a map prepared in 1943 by Office of Chief Engineer, Southern Railway System Lines, showing this information.

Examiner Stiles: Let this be identified as Exhibit No. 1. [fol. 1371] (Exhibit No. 1, witness Aiken, marked for identification.)

## By Mr. Oliver:

Q. Please give in chronological order a brief statement of the one-way interstate and intrastate basic passenger fares applicable in Southern Passenger Association Territory from April 1, 1908, to date.

A. Generally speaking, the authorized bases of oneway passenger fares in Southern Passenger Association territory, i.e., territory south of the Potomac and Ohio and east of the Mississippi Rivers, including the gateways, for this period were as follows:

From April 1, 1908, to June 9, 1918, inclusive, 2.5 cents per mile, in all classes of equipment.

From June 10, 1918, to August 25, 1920, inclusive, under order of the Director General of Railroads, 3 cents per mile, in all classes of equipment. For the period June 10, 1918, to November 30, 1918, an additional charge of 16% per cent of the one-way fare was assessed for travel in sleeping and parlor cars.

From August 26, 1920, to November 30, 1933, inclusive, 3.6 cents per mile, in all classes of equipment, plus a surcharge for passengers traveling in sleeping or parlor cars of 50 per cent of the charge for space occupied in such cars.

I might divert here a little and point out parenthetically that during the years 1932 and 1933 certain of the southern carriers decided as an experimental proposition to establish [fol. 1372] lish lower fares in an attempt to attract additional travel to the railroads in competition with other forms of transportation, particularly with the private automobile and buses.

For example, from April 1, 1933, to November 30, 1933, inclusive, the Atlanta and West Point Railroad-Western Railway of Alabama, Mobile and Ohio Railroad (now Gulf, Mobile and Ohio Railroad), Louisville and Nashville Railroad and Nashville, Chattanooga nad St. Louis Railway had in effect experimental one-way fares on basis of 3 cents per mile in sleeping or parlor cars without surcharge and 2 cents per mile in coaches. During this same period the Southern Railway System Lines were experimenting be-

tween various points on their lines with a fare of 1.5 cents per mile, good for transportation in coaches only.

Continuing now with the chronological history:

From December 1, 1933, to November 14, 1937, inclusive, 3 cents per mile in sleeping or parlor cars and 1.5 cents per mile in coaches, except the the coach fare on certain roads such as the Illinois Central System, Mobile and Ohio Railroad (now Gulf, Mobile and Ohio Railroad) and St. Louis-San Francisco Railway was kept at 2 cents per mile, these latter roads meeting the 1.5 cents per mile competition between certain points.

From November 15, 1937, to January 14, 1939, inclusive, 3 cents per mile in sleeping or parlor cars and 2 cents per

[fol. 1373] mile in coaches.

From January 15, 1939, to February 9, 1942, inclusive, 3 cents per mile in sleeping or parlor cars and 1.5 cents per mile in coaches, except on certain lines such as the Gulf, Mobile and Ohio Railroad, Illinois Central System, St. Louis-San Francisco Railway coach fare was 2 cents per mile, competition being met between certain points.

From February 10, 1942, to September 30, 1942, 3.3 cents per mile in sleeping or parlor cars and 1.65 cents per mile in coaches, except on lines of the Gulf, Mobile and Ohio Railroad, Illinois Central System, and St. Louis-San Francisco Railway fare was 2.2 cents per mile, meeting

competition between certain points.

A comparison of the authorized basic coach fares in effect for the several periods mentioned with the coach fare being sought in these proceedings, i. e., 2.2 cents per mile, which is the same coach fare currently in effect for interstate traffic, shows:

For the period April 1, 1908, to June 9, 1918, the fares were approximately 13½ per cent higher.

For the period June 10, 1918, to August 25, 1920, the fares were approximately 36 per cent higher.

For the period August 26, 1920, to November 30, 1933, the fares were approximately 63½ per cent higher.

Q. When and under what circumstances was the 2.2 cent [fol. 1374] coach fare made applicable for interstate transportation generally throughout the south?

A. On July 14, 1942, substantially all railroads operating in Southern Passenger Association Territory (except

those roads which were maintaining at the time a coach fare of 2.2 cents per mile) filed a petition with the Interstate Commerce Commission for authority to place their one-way coach fares on the same basis as in effect generally throughout the United States. When this petition was filed the great majority of the southern roads had in effect a coach fare on the basis of 1.65 cents per mile. However, certain roads, for example, the Gulf, Mobile and Ohio Railroad, Illinois Central System and St. Louis-San Francisco Railway had in effect at that time coach fares on basis of 2.2 cents per mile, this being the same basis generally in effect throughout the rest of the United States.

The authority sought was granted by the Interstate Commerce, Commission in its order dated August 1, 1942, modifying the original order in Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942, 248 I. C. C. 545, and the basis of coach fares authorized thereunder, i. e., 2.2 cents per mile for interstate traffic, was made effective on October 1, 1942.

Q. When the petition to which you refer was filed with the Interstate Commerce Commission, was there any protest filed with the Commission in connection with the proposed increase?

[fol. 1375] A. No. However, after the Interstate Commerce Commission had entered its order of August 1, 1942, approving the increase and after tariffs had been filed as authorized by the Interstate Commerce Commission, Mr. Leon Henderson, then Price Administrator, filed a written protest and request for suspension. The Interstate Commerce Commission refused to suspend the tariffs and they became effective interstate, as previously stated, on October 1, 1942.

Q. What one-way coach fare is now being charged by the Alabama railroads for intrastate transportation in Alabama?

A. The basis of one-way coach fares generally maintained by the Alabama carriers is 1.65 cents per mile. However, certain of the Alabama carriers, i. e., Gulf, Mobile and Ohio Railroad, Illinois Central System, and St. Louis-San Francisco Railway, now have in effect a coach fare of 2.2 cents per mile except in such instances where they meet competition of the lines maintaining 1.65 cents per mile fare.

Q. Mr. Aiken, is the fare of 1.65 cents per mile, to which you have just referred as being maintained by certain railroads in Alabama, maintained as a result of the order of the Alabama Public Service Commission?

A. Yes, it is right now.

Q. Subsequent to the establishment of the interstate coach fare of 2.2 cents per mile to and from points in Alabama, did the Alabama lines undertake to establish the [fol. 1376] same basis of fares intrastate in Alabama?

A. Yes.

Q. Explain what steps were taken and the results of the

efforts of the Alabama lines in this direction.

A. As previously shown, tariffis and supplements reflecting the establishment of 2.2 cents per mile were filed with the Alabama Public Service Commission to become effective December 1, 1942. These tariffs were suspended until January 30, 1943, by order of the Alabama Public Service Commission dated November 5, 1942, in Docket No. 8618, which order provided that the matter be assigned for hearing before that body at Montgomery, Alabama, on November 24, 1942. The hearing was duly held on that date and decision of the Commission was rendered Junuary 15, 1943, denying the proposal of the carriers to make the fares proposed effective in the State of Alabama.

Q. Have the railroads in the south, including the Alabama lines sought within recent months to put their intrastate passenger fares in other States on the interstate

basis?

A. Yes.

Q. State what action has been taken by the various State. Commissions in the proceedings involving the proposed in-

creases in passenger fares.

A. Petitions were filed with the Commissions in those States, the laws of which require that the authority of the State Commission be first obtained. In other States, in [fol. 1377] which no such requirement exists, tariffs designed to make effective the coach fare of 2.2 cents per mile were duly filed with the State Commissions.

The State Commissions of Florida, Louisiana, Mississippi, South Carolina and Virginia have already approved the proposed fares. The Railroad Commission of Kentucky denied the increase in coach fares, but permitted the Kentucky lines to put into effect the round-trip fares good for transportation in sleeping or parlor cars. Hearings

have been held in the States of Georgia, North Carolina and Tennessee but the decisions of the regulatory bodies of those States have not as yet been released.

Mr. Oliver: I might state at this point, Mr. Examiner, that Thirteenth Section petition has now been filed with respect to the fares in the State of Kentucky, to which Mr. Aiken has just made reference. That was filed on June 25.

By Mr. Oliver:

Q. Do all of the Alabama lines maintain a one-way coach fare of 2.2 cents per mile for interstate transportation to and from points in Alabama?

A. Yes.

Q. Is this fare of 2.2 cents per mile now in effect for interstate transportation throughout the south and generally throughout the remainder of the United States?

A. Yes, with the possibility of a few exceptions on lines

operating west of the Mississippi River.

[fol. 1378] Q. Please explain how it happened that prior to October 1, 1942, some, but not all, of the Southern railroads had in effect a coach fare of only 1.65 cents per mile, whereas, the fare generally applicable in other parts of the country was 2.2 cents per mile.

A. In Docket 26550, Passenger Fares and Surcharges, decided February 28, 1936, and reported in 214 I. C. C. 174, the Interstate Commerce Commission, after conducting an extended investigation, found that passenger fares of 2 cents per mile for transportation in coaches and 3 cents per mile for transportation in sleeping or parlor cars throughout the United States would be reasonable. In the same case the Commission referred to what it described as the "experimental coach fare" of 1.5 cents then being maintained by certain railroads in the Southeast and, although approving the reasonableness of a coach fare of 2 cents per mile, held that the reduced coach fare of 1.5 cents was not "unlawful".

As previously indicated, effective November 15, 1937, the Southeastern roads increased their basic one-way fare from 1.5 cents per mile to 2 cents per mile. Subsequently, certain of the Southeastern carriers, not including, however, the Illinois Central System, Gulf, Mobile and Ohio Railroad and the St. Louis-San Francisco Railway, and possibly some of the smaller roads, concluded it would be

to their advantage to restore the former one-way coach fare of 1.5 cents per mile. This was done effective Janu-

[fol. 1379] ary 15, 1939.

By its order of January 21, 1942, in Ex Parte No. 148, the Interstate Commerce Commission, upon petition of the railroads operating throughout the United States, approved a uniform increase of ten per cent in all passenger fares with certain provisions as to the disposition of fractions. Accordingly, passenger fares throughout the United States were increased ten per cent effective February 10, 1942. The general basis of coach fares, i. e., 1.5 cents per mile, applicable in the Southeast, with the exceptions heretofore mentioned, automatically became 1.65 cents per mile.

On the other hand, the former fare of 2 cents per mile which was being maintained by the railroads in all other parts of the country, including some of the railroads in the Southeast, became 2.2 cents per mile. This ten per cent increase was also approved by the Alabama Commission for intrastate travel on lines then maintaining a 2 cent per mile basis as well as lines maintaining a basic fare of 1.5 cents per mile.

Q. Do the passenger trains operated in the State of Alabama carry both interstate and intrastate passengers?

A. Yes.

Q. Do interstate and intrastate passengers frequently ride on the same trains and in the same coaches?

A. Yes.

Q. Do you, as an experienced railroad passenger traf-[fol. 1380] fic officer, know of any reason which would justify the maintenance of a fare of only 1.65 cents per mile in intrastate coach transportation within the State of Alabama, when an interstate passenger traveling to or from points within the State is required to pay 2.2 cents per mile?

A. No.

Q. With the present differences between intrastate and interstate fares, is it possible for a pasenger to defeat interstate fares to and from points in Alabama by buying an intrastate ticket for a part of a trip?

A. Yes.

Mr. Bruce: Mr. Examiner, at this time I wish to enter an objection. It is not possible to defeat an interstate fare

with a combination of an interstate fare and an intrastate fare. Such fares would be unlawful, and I have a reference to the Supreme Court decision which states that such fares would be unlawful.

I also have a number of cases, a great number of cases in which the Commission has held that, that is along sub-

stantially the same lines that the Court has held.

And incidentally, in running down the decisions of the United States Supreme Court, I find Shepherd states that this decision has not been amended in any way, or in any way changed by the Court itself. The Commission cannot change the finding of the Court.

[fol. 1381] Incidentally, in explaining this, the Act covers the fares, charges, and rates, and the case that I have in mind which names a number of citations, in which the Court has ruled, and in which the Commission has carried out the mandate of the Court, passenger fares are not involved, due to the fact a savings on a combination of intrastate fares and interstate fares would be unlawful. Therefore, it has never been tested by the Court.

But the fact remains that it was tested in the Court in regards to freight movement, and the Court is very explanatory in its decision, and reversed the two lower Courts, if you please, the United States District Court and the Court

of Appeals.

Therefore I maintain that a fare which embraces a combination of an interstate fare to a border point and an intrastate fare within the State is an unlawful fare, and that the carriers cannot sell a ticket of that sort, its agent cannot sell a ticket of that sort. Neither can the conductor on the train, if he has knowledge, sell a cash fare slip of that sort. And if he did, or if the employee at the station did, the application of the rate would be unlawful, and the agent of the carrier would be conniving to defeat interstate fares.

Mr. Oliver: Mr. Examiner, we, of course, have no disposition to quarrel with the statement that such fares would be unlawful, and that the person that indulged in it is vio[fol. 1382] lating the law, and that the agent of the railroad would be violating the law if he participated in a transaction of that sort.

But we do say that the potentiality is there, and that it is being indulged in to the best of our knowledge, information, and belief, and I think the evidence is entirely pertinent.

Mr. White: I would like to make this statement, if I may, Mr. Examiner. The prohibition of the Interstate Commerce Act against undue prejudice and undue preference in a case of this sort is directed to what is actual, and not what is possible. And this question simply asks if it is possible for a passenger to defeat interstate fares, to and from points in Alabama, by an intrastate ticket for part of the trip, and we object to the question on this ground, what the petitioners must show is something that is actual, an actual prejudice, not just a mere possibility of prejudice, or a mere possibility of preference.

Mr. Bruce: Mr. Examiner, the theory that Counsel is advancing here through his witness is substantially the same as that a man could commit burglary. Everybody knows that a man could commit burglary, but burglary is unlawful, and this class of a rate would be unlawful.

Examiner Stiles: The carriers are not contending as I understand it that such a combination of rates would be lawful for an interstate journey.

[fol. 1383] Mr. Oliver: We do not, no, sir, On the contrary, we say it would be unlawful.

Examiner Stiles: But you are showing the fact that if a passenger gets off the train and terminates his interstate journey and starts a new intrastate journey, it would be possible for him to travel at such charges which would be less than had he continued through as an interstate passenger. Is that correct?

Mr. Oliver: That is correct.

Mr. White: May I suggest this, Mr. Examiner, in one of the Georgia intrastate Section Thirteen cases, in the case of passenger fares too, the Commission ruled that a mere showing that some Act might be possible that would be unduly prejudicial or unduly preferential was not sufficient under the statute to establish the fact of preference or prejudice.

Mr. Bruce: We make reference to that case at the present time, and Mr. Examiner, we will give you the citations.

We have reproduced to some extent that decision.

Examiner Stiles: In the Examiner's judgment the objection goes more to the weight of the evidence than to its admissibility, and the objection is overruled.

By Mr. Oliver:

Q. Will you proceed with your testimony, Mr. Aiken? Have you prepared an Exhibit which illustrates this situation?

A. Yes.

[fol. 1384] Mr. Bruce: I want to object to the Exhibit, again, Mr. Examiner. It is all right for Counsel to state that it can be done in theory, but in practice it cannot be done, and I object to the Exhibit that will show an example.

Examiner Stiles: The objection is overruled.

By Mr. Oliver:

Q. Proceed, Mr. Aiken.

A. Yes. As one illustration, the published interstate one-way coach fare from Birmingham, Alabama, to Chattanooga, Tennessee, (on basis of 2.2 cents per mile) is \$3.19. It is possible to purchase a one-way coach ticket from Birmingham, Alabama, to Valley Head, Alabama, at the intrastate rate of \$1.70, constructed on basis of 1.65 cents per mile, and rebuy, or pay cash fare on the train, from Valley Head, Alabama, to Chattanooga, Tennessee, at interstate fare of 92 cents (2.2 cents per mile) or total expenditure of \$2.62, thereby defeating the through published interstate rate by 57 cents.

I file Exhibit No. 2 giving a number of illustrations or examples of possible reductions in charges for interstate trips on tickets good for transportation in coaches only by purchasing to the point nearest the State line at which trains are regularly scheduled to stop and rebuying therefrom to interstate destinations. These examples, or illus-

trations, can be multiplied indefinitely.

Examiner Stiles: This will be identified as Exhibit No. 2.

(Exhibit No. 2, witness Aiken, marked for identification.)
[fol. 1385] Examiner Stiles: Your objection goes to this as well. That is understood.

Mr. Bruce: May I ask Counsel a question at this time?

Examiner Stiles: I beg your pardon.

Mr. Bruce: May I ask Counsel a question at this time? Examiner Stiles: Yes.

Mr. Bruce: Do you state that these examples are built up on a lawful rate, on a lawful application of the rate?

Mr. Oliver: I stated very distinctly, Mr. Bruce, that we do not state that that would be a lawful arrangement.

Mr. Bruce: And it would be contrary to law, you admit

that?

Mr. Oliver: Yes, I do. Mr. Bruce: That is all.

### By Mr. Oliver:

Q. Now, Mr. Aiken, do passengers actually defeat the interstate fares in the manner you have indicated?

A. While it will be appreciated this is a difficult and almost impossible matter to prove, it is common knowledge advantage has been taken by interstate passengers buying tickets at the lower intrastate fare to some points and rebuying from such points, or paying cash fares on trains to destinations. The condition which permits of this does exist but it is difficult to police.

Mr. Bruce: I object to the answer, due to the fact he has stated no person, no name, what he has stated is merely [fol. 1386] conjecture, and it is not admissible.

Unless Counsel is prepared to have his witness state the names of the people and the occasions on which this occurred, and the date, the question and the answer become one of hearsay, a matter of hearsay, and I object.

Examiner Stiles: The objection goes to the weight of the evidence and is overruled.

## By Mr. Oliver:

Q. Now, Mr. Aiken, have you had instances where your own agents have asked for instructions as to whether or not they could sell split tickets, and things of that sort in connection with these intrastate fares?

A. Yes, Mr. Oliver, I have had a number of them. As an illustration, during the period that the Florida fares were lowered, interstate fares—I mean intrastate fares, agents in Cincinnati would telephone me personally and ask if they could issue a ticket to Jacksonville, Florida, at the interstate fare, so that the passenger could use the through service where he had to change cars any way, during the winter season, and if he could issue another ticket going to Miami at the coach fare, and we have told him definitely and positively that could not be done.

The same thing has been true in Atlanta and at other points on our railroad.

Mr. Bruce: The same objection.

By Mr. Oliver:

Q. Finish your answer.

[fol. 1387] A. But so far as the individual names of the parties are concerned, of course, I didn't have anything in that respect.

Mr. White: The Alabama Commission objects to that sort of testimony here as having any probative value for these other and further reasons: It is the right of a passenger who wants to take passage from Cincinnati to Jacksonville, Florida, to ride on an interstate ticket, and if he breaks his journey there and attends to business in Jacksonville, he has got a legal right to then buy an intrastate ticket from Jacksonville, Florida, to Miami, or to some other point.

There is nothing in this testimony to show that the passenger could not legally do that, and would not have a

legal right to do it.

Mr. Oliver: I might point out, Mr. Examiner, that the witness testified that apparently these—or my interpretation of his festimony is that these inquiries were made by his agents, and were inspired by requests for tickets of that sort by passengers. Is that correct?

The Witness: Yes.

Mr. White: I would like to ask Counsel how he knows this witness can testify as to what inspired the passenger to do something in Cincinnati.

Mr. Oliver: I didn't say that, Mr. White, I said as I understood it the inquiries were inspired by inquiries by

passengers. . Is that correct?

[fol. 1388] The Witness: Yes, sir. You see, what actually happens is this, here is a passenger in Cincinnati that wants to go to Miami, Florida, and he has got a trunk, and he wants to check it through. If he bought a split ticket, as we call it; from Cincinnati to Jacksonville and had the other ticket, regardless of its class, he could check his baggage through, and therefore he would defeat the first class fare from Cincinnati to Miami, Florida.

Examiner Stiles: He would get through interstate check-

ing service.

The Witness: That is right.

Examiner Stiles: On a journey, part of which was intrastate?

The Witness: Yes, sir.

Examiner Stiles: According to the ticket that he bought?

The Witness: That is right.

Mr. Bruce: I am going to ask Counsel if his agents are soliciting that kind of a ticket, that is they are attempting to sell a ticket on a split fare proposition.

Mr. Oliver: You heard the testimony of the witness that he had positively instructed his agents not to sell that kind

of transportation.

Mr. Bruce: What prompted the inquiry then?

The Witness: May I answer?

Mr. Oliver: I wish you would, Mr. Aiken please, sir. [fol. 1389] The Witness: Like all other businesses that today have a lot of new manpower, they don't understand all of the intricate things of the business, and they try to give the passenger the benefit of the lowest possible combinations they can make. That has been without knowing that they are violating an interstate fare, and the minute that they bring it to our attention, of course we tell them no.

Examiner Stiles: I believe there is an objection on the

record. The objection is overruled.

By Mr. Oliver:

Q. You have prepared an Exhibit illustrating that the present lower coach fares in Alabama result in discrimination against interstate commerce. Please offer your Exhibit and explain it.

A. Yes.

Examiner Stiles: Let this one page Exhibit which is being distributed be identified as Exhibit No. 3.

(Exhibit No. 3, witness Aiken, marked for identification.)

By Mr. Oliver:

Q. Proceed.

A. I file Exhibit No. 3, showing this information. As an example of this, the interstate fare on basis of 2.2 cents per mile from Tuscaloosa, Alabama, to Laurel, Mississippi, a distance of 154 miles, is \$3.44; whereas, the intrastate fare on basis of 1.65 cents per mile from Tuscaloosa, Ala-

bama, to Valley Head, Alabama, a distance of 159 miles, [fol. 1390] or four miles greater, is but \$2.65, a difference of 75 cents. The examples shown in the Exhibit are only illustrative and could be multiplied indefinitely.

Mr. Bruce: The same objection. Examiner Stiles: The same ruling.

## By Mr. Oliver:

Q. Did the Interstate Commerce Commission have before it in the original and reopened proceeding in Ex Parte 148 a full and complete record of the facts concerning revenues, expenses, operating conditions, financial conditions, etc., of the southern railroads, including the Alabama lines, as well as of railroads operating in other parts of the country.

Mr. White: We object to that because that is just calling for a mere opinion or conclusion of this witness.

Mr. Oliver: I am entirely willing to let the record speak for itself in that respect.

Mr. White: All right.

Examiner Stiles: The question is withdrawn as I understand it.

Mr. Oliver: That is right.

## By Mr. Oliver:

Q. In the report and order of the Interstate Commerce Commission on the further hearing in Ex Parte 148 decided April 6, was there any modification made in any way in its previous findings in connection with the present interstate standard passenger fares?

[fol. 1391] Mr. White: The same objection to that question.

Mr. Oliver: I think that is entirely proper.

Mr. White: The witness is being asked by Counsel to pass on the question as to whether the decision in Ex Parte 148 was a modification of previous findings of the Commission, and that calls for his judgment, or a comparison of the decision in Ex Parte 148; and I assume the decision in ICC 26550, or previous decisions which were made several years before, when conditions were very different.

Examiner Stiles: The decision, of course, will speak for itself. What this witness might say would have no weight.

If he wishes to state his understanding of what the Com-

mission,—or whether or not there was a modification, as a basis for something further that he is going to testify to, he may state his understanding of it. Of course, the Commission is not governed by that.

## By Mr. Oliver:

Q. Mr. Aiken, has there been any change in the interstate coach fares since the decision of the Interstate Commerce Commission in the reopened proceeding in Docket Ex Parte 148?

A. No, not any.

Q. Now, Mr. Aiken, was there any change in the interstate fare which was established as a result of the original proceeding in Docket Ex Parte 148 by virtue of the decision in the reopened case?

[fol. 1392] A. No, they remained at 2.2 cents per mile.

Mr. White That is objectionable for the same reason, a comparison of the decisions is not permissible. The decisions themselves are the best evidence.

Mr. Oliver: You don't question the fact, Mr. White, do you, by any chance, that there has been no change as a result of the decision in the reopened 148 proceeding?

Mr. White: I am not prepared to say. I have not studied

the decisions to see as to that feature.

Examiner Stiles: Is the witness testifying from his knowledge of the fares themselves?

Mr. Olivers Yes, of course he is.

Examiner Stiles: He may testify to that fact.

Mr. White: That is a fact, of course.

# By Mr. Oliver:

Q. And as I understand it there was no change in the interstate fare as a result of the reopened proceeding in Ex Parte 148?

A. No, sir, not on the interstate fare.

Mr. White: As I understand it, Counsel for the petitioners is not contending here that Ex Parte 148 was an investigation into the reasonableness of the rates involved in that case.

Mr. Oliver: I think that is a fair-conclusion, that they did consider the reasonableness of the 2.2 cents fare, which was under attack by the OPA in the reopened proceeding.

Mr. White: Was there any testimony offered in that case? When OPA petitioned for that matter to be reopened, [fol. 1393] and they be allowed to offer testimony, was there any testimony given?

Mr. Oliver: Very voluminous testimony, Mr. White: J

believe you were there.

Mr. White: I am not talking about the first 10 per cent increase, I am talking about when you filed your tariffs there to make the increase from 1.65 to 2.2 cents per mile. There was no evidence offered under that proceeding, was there?

Mr. Oliver: Mr. Examiner, I don't want to prolong this, but I would like to point out to Mr. White that Mr. Gilbert spent, I don't know, possibly two days on the stand, and put in very voluminous Exhibits, and Mat Dr. Parmelee for the railroads put in the record a rather volumious amount of testimony.

Mr. White: I do recall that, on the reopened proceeding.

Mr. Oliver: The record will speak for itself on that.

Mr. White: On the reopened proceeding?

Mr. Oliver: Yes, that is true. Mr. White: Yes, that is correct.

## By Mr. Oliver:

Q. Are the railroads, including the Alabama lines, encountering any particular difficulties or incurring any unusual expenses in connection with passenger train opera-

tions under present conditions?

A. Yes, they are. The handling of military movements necessarily entails substantial added costs. Equipment must be assembled at point of origin and this, in many instances, necessitates dead heading equipment long disfol. 1394] tances. In addition, after the movement has been completed the equipment must in many cases be returned from destination point.

Mr. Bruce: It appears that the Counsel and witness are attempting to make a case. Is the military movement rate

going to be increased?

Mr. Oliver: I beg your pardon?

Mr. Bruce: Are the military movement rates and fares going to be increased?

Mr. Oliver: Absolutely.

Mr. Bruce: They are pratically altogether on a land grant rate.

Mr. Oliver: We will go into that, we will show the extent that the land grant enters into the situation. But military fares as such were involved in the proceeding before the Alabama Commission, and the military fares were increased under the order of the Interstate Commerce Commission as to interstate commerce, and we are asking of the Interstate Commerce Commission permission to put the intrastate fares in Alabama on exactly the same basis as the interstate fares.

Mr. Bruce: Do you have an intention of making a showing of your witness by segregating such military expenses away from civilian expenses of passenger movements?

Mr. Oliver: We do not.

By Mr. Oliver.

Q. Will you proceed with your answer please sir? [fol. 1395] A. To comply with the Government requirements, it is necessary for a "train escort" to ride troop trains. This, of course, is an added item of expense.

Examiner Stiles: Explain that term, "train escort."

The Witness: Yes, sir. We assign a man who is what you might term a "contact man", with the train commander. He looks after all of the details, to see that the train is kept on schedule, keeps in touch with the operating people, arranges for such supplies as may be required, and feed the men, if and when they don't have sufficient on the train, and does anything that is possible to assist the train commander in getting through.

### By Mr. Oliver:

Q. Proceed.

A. In order that proper protection may be accorded, in accordance with the requirements of the Government for military movements, it has been necessary to increase the personnel in general offices in order that such offices may be on duty, in some instances, for 24 hours each day and others from 12 to 16 hours per day. This also is an item, of additional expense.

Because of the volume of military, as well as civilian travel, the railroads have been compelled not only to increase their general office forces but also to increase the forces in ticket agencies, another item of expense.

Large sums of money have been spent in the last decade in [fol. 1396] remodeling and air conditioning passenger equipment all in an effort to recapture a portion of the traffic using other modes of transportation, particularly from the highways. While the monies expended for these improvements have provided additional comforts and conveniences to the traveling public at, so far as coach travel is concerned, the lowest charges ever made by the railroads, it has materially increased the cost of service.

Examiner Stiles: Is coach service, as a rule, air condi-

tioned at the present time?

The Witness: Generally speaking, yes sir, on most all railroads, although branch lines don't have it in some instances, and occasionally we have to put in what we call a non-air conditioned ear because of the conditions. But, generally speaking, all big trains have air condition equipment on them.

Examiner Stiles: Is that so on the troop trains?

The Witness: No, sir, not always, no, sir. Generally speaking it is not.

Examiner Stiles: Off the record.

(Discussion had off the record.)

Examiner Stiles: Proceed.

Mr. Oliver: Continue your statement.

Mr. Bruce: Generally speaking", will you explain that? Tell me what percentage of your coaches are air conditioned on the Southern Railway, for instance, that you are using at the present time.

fol. 1397] The Witness: I am getting into that a little by later on, if you please Mr. Bruce. I will tell you exactly

how many we have air conditioned.

Examiner Stiles: Proceed.

By Mr. Oliver:

Q. Will you continue your statement?.

A. The Southern Railway System Lines, alone, have air conditioned, or purchased new with air conditioning facilities, 189 coaches. Many coaches have been remodeled to provide additional space for retiring and smoking rooms for both ladies and men, with soap, towels and drinking cups furnished without charge. In making these improvements, the seating capacity of the coaches was reduced

roughly from 15 to 20 per cent, or from 80 and 88 persons to 70 persons; 14 Southern Railway System coaches have been equipped with reclining chairs and in these coaches the seating capacity was reduced almost 50 per cent or from 80 persons to 46 persons. This greatly decreased carrying capacity, correspondingly, lowering the revenue per coach.

Southern Railway System Lines have purchased 6 new streamlined passenger trains with total of 21 coaches, 6 combination baggage coaches, 5 dining cars and 6 buffet coaches; 6 two-car Diesel units and 16 Diesel powered locomotives for passenger train service. Uniformed passenger representatives, whose sole duty is to give helpful service and assistance in making the passengers' trip comfortable and pleasant, accompany these trains. A hostess is also provided for these trains. Her duties are to look [fol. 1398] after the comfort of women and children. In addition, one attendant is assigned to each two coaches.

All of these facilities and services add to the cost of operations. They are available to Alabama intrastate passengers as well as interstate passengers to or from Alabama or passing through Alabama, and the interstate passenger pays for this service on the basis of 2.2 cents per mile, whereas the intrastate passenger pays but 1.65 cents per mile.

Examiner Stiles: In connection with your statement that you have given about these increased services; isn't it a fact that the railroads are now receiving a revenue from the seats in their observation and lounge cars, whereas heretofore they received no revenue?

The Witness: Yes, sir, that is correct.

Examiner Stiles: Continue please:

Mr. White: Isn't it also true that in these cars where you testified that some of the seating capacity has been reduced to provide additional space for smoking rooms, and so on, that now the smoking rooms and the aisles are generally occupied by pasengers not sitting down, but standing up for a great part of their journey, isn't that true?

The Witness: That is correct sir.

Mr. White: In other words, you are going into all these comforts which you have provided, which now have very little meaning, because on practically all of your trains and [fol. 1399] the trains of the other petitioners, not only intrastate in Alabama, but interstate, the passengers, a great

many of them, have to stand up for a good part of their journeys. Isn't that true?

The Witness: That is true to some extent, yes, sir.

Mr. White: All right.

#### By Mr. Oliver:

Q. You don't state that as a general proposition, do

you?

A. No. Whenever it is possible—I was trying to answer Mr. White's question truthfully and honestly. Wherever it is possible and a car is available and that condition exists, a new car is put in to relieve it. But the great volume of military traffic sometimes is such that we often have to take them out of the regular trains and put them to make the military movement.

Examiner Stiles: So far as this evidence about cutting down the carrying capacity of cars is concerned, it would be more enlightening and helpful to the Commission if you showed the average number of passengers per car in the former case, and at the present time.

Mr. Oliver: We have that information. Just a moment. Examiner Stiles: Proceed with your examination of the

witness, Mr. Oliver.

Mr. Oliver: All right.

#### By Mr. Oliver:

Q. Please state for the record the number of troop trains [fol. 1400] operated on Southern Railway System Lines during the months of April and May, 1943, and the number of ears handling troops operated in your regular trains during these months.

Mr. Bruce: I object to that. They are not public trains, they are special trains operated for the United States Army, or the Navy.

Examiner Stiles: Are the passengers on those trains pay-

ing fares?

Mr. Oliver: They are paying fares.

Examiner Stiles: Are they involved in this case!

Mr. Oliver: They most certainly are, and we regard that as entirely pertinent, as going to the question of the reasonableness of the rate.

Examiner Stiles: The objection is overruled. Now, am I to understand that by "troop trains" you mean special

Mr. Oliver: That is right.

The Witness: That is correct.

Mr. Oliver: That is handling troops exclusively.

Mr. White: Do the troops on those trains pay a coach fare of 2.2 cents per mile interstate?

Mr. Oliver: With the exception of the discount on regular fares, 5 per cent, which Mr. Aiken will cover later in his testimony, and the land—that is so far as the land grant [fol. 1401] affects it. But, that will all be covered in his later testimony.

Mr. White: You mean to say there is no difference now in the coach fare interstate in Southern Territory of 2.2 cents per mile for civilian passengers, and for men in uniform?

Mr. Oliver: Mr. White, if you are talking about furloughed passengers, that is one thing; if you are talking about a troop train movement, it is another.

Mr. White: Let him tell just what the fare is.

Mr. Oliver: If you will bear with us, we will bring that out.

Mr. White: All right.

By Mr. Oliver:

Q. Proceed with your answer, Mr. Aiken.

Examiner Stiles: Let me ask this question also.

Mr. Oliver: Yes, sir.

Examiner Stiles: Preparatory to his answer.

Mr. Oliver: Yes, sir.

Examiner Stites: Do some of these troop trains move at the intrastate fares here in the State, or some reduction based on those fares?

Mr. Oliver: I would have to answer that by—or I expect I had better let the witness answer it. I am certain there is.

The Witness: Wherever there is an intrastate movement the Government is given the benefit of the intrastate rate [fol. 1402] less an allowance that we have under contract with them.

Examiner Stiles: I think that clearly shows the admissibility of the evidence. Now, proceed with your answer.

Mr. Oliver: Please continue.

A. On the Southern Railway System Lines, during the month of April, 1943, there were operated 446 troop trains. Two hundred and eighty-nine (289) regular trains were operated in two sections and 1394 extra cars handling troops were operated in regular trains. During May there were operated on Southern Railway System Lines 345 troop trains. Three hundred and seventeen (317) regular trains were operated in two sections and 1458 extra cars handling troops were operated in regular trains.

Q, Does the Government pay full tariff fares for troop

movements?

A. No. Between points between which no land grant is involved, an allowance of 5 per cent is made the Government from commercial fares of all classes. For example, from Birmingham, Alabama, to Anniston, Alabama, the intrastate commercial coach fare is \$1.10. This is subject to 5 per cent deduction, the Government paying net fare of \$1.04.

Between points between which the fares apply via route where land grant deduction is applicable, either in whole or in part, land grant deduction of 50 per cent is made from the commercial fare for that part of the route which is land [fol, 1403] grant and from the amount thus obtained an additional allowance of 3 per cent is made. For example, from Attalla, Alabama, to Birmingham, Alabama, the intrastate commercial fare is 99 cents which is subject to 50 per cent land grant deduction, leaving a gross fare of 49 cents. This latter amount is further subject to an allowance of 3 per cent, which yields net fare of 48 cents.

In Alabama, as in many other States, there is considerable land grant mileage. The entire line of the Alabama Great Southern Railroad in Alabama, a distance of 244.94

miles, is land grant.

The line of the Southern Railway from Selma, Alabama, to Jacksonville, Alabama, a distance of 145 miles, is also land grant.

There is substantial land grant mileage on other Ala-

bama railroads.

The Government settles for this character of transportation only on the basis of the lowest net fare, regardless of the fact that the movement may take place over a route via which there is no land grant whatsoever involved. To illustrate, the published fare from Selma, Alabama, to Washington, D. C., is applied via Birmingham, Alabama Great

Southern Railroad, Chattanooga, Tennessee, Southern Railway, Bristol, Norfolk and Western Railway, Lynchburg; thence Southern Railway; it also applies via Western Railway of Alabama-Atlanta and West Point Railroad [fol. 1404] (via Montgomery) to Atlanta thence Southern Railway or Seaboard Railway to Richmond and Richmond, Fredericksburg and Potomac Railroad. The net fare is established, via the route through Birmingham-Chattanooga-Bristol and Lynchburg, which is the route containing the land grant milease; the net fare so stablished is also applied via the Montgomery-Atlanta routes via which routes there are no land grant lines involved, but the lines operating over these routes only receive the competitive net fare and absorb the difference created by the land grant deduction.

Q. At the time the one-way coach fare for interstate transportation was increased to 2.2 cents per mile, was any exception made as to members of the armed forces in uniform on furlough?

A. Yes. Upon request of the United States Government, reduced round-trip coach fares on the basis of 1-1/4 cents per mile were authorized for the personnel of the United States Army, Navy, Marine Corps, Coast Guard, Women's Naval Reserves, Women's Army Auxiliary Corps, Women's Coast Guard Reserves and Women's Marine Corps Reserves, traveling in uniform and at their own expense when on official leave, furlough or pass. This same fare is also accorded nurses, when not traveling in uniform, upon presentation of proper identification and, likewise, is accorded under similar conditions to the personnel of military forces of the several allied nations.

Examiner Stiles: Mr. Aiken, going back to your answer [fol. 1405] to a question before the last one, where you spoke of the less net fare being applied over competing lines, I think it would be pertinent to state whether that is done by the carriers voluntarily or whether there is some requirement of law.

The Witness: It is done under what we term, Mr. Examiner, the equalization agreement with the Federal Government. Answering your question specifically, unless some exception is shown, it is at the direction of the carriers themselves. The Government does not require it, but they won't pay any more by any route than by the longest land grant route.

Examiner Stiles: So that any reductions which the carriers receive in meeting the land grant rates over competing routes is a voluntary concession?

The Witness: That is correct.

Examiner Stiles: On the part of the carriers?

The Witness: That is correct: But if the land grant did not exist, of course that situation would not be there.

Mr. Bruce: And if the competing line did not want to meet the situation they would not have to either; would they?

The Witness: They would have to meet it, Mr. Bruce, unless they make some exception to the equalization agreement.

Mr. Bruce: But they are not forced by the law to enter into the agreement!

The Witness: No, there is no law.

Mr. Bruce: They merely want to meet the competition? [fol. 1406] The Witness: That is right.

Mr. Bruce: And they meet it?

The Witness: In some instances they endeavor to do it by routes they consider non-serviceable routes, and they have a committee in Washington that sits on those routes and rules whether they are or not practical routes. However, they have to be settled; if they are not, they are not accepted.

Examiner Stiles: Taking your answer to the last question that your Counsel asked you, this 11/4 cents per mile, that was a rate concession voluntarily agreed to by the carriers as I understand it.

The Witness: At the request of the military branches of the Government.

Examiner Stiles: Yes, sir. Thank you.

The Witness: Yes, sir. Examiner Stiles: Proceed.

#### By Mr. Oliver:

Q. Now, you have referred, Mr. Aiken, to the interstate rate of 1½ cents per mile for round-trip transportation for soldiers and men and women in uniform on furlough. There has been no proposal to increase this furlough fare for intrastate travel in Alabama, has there?

A. No, sir, no proposal is made to increase the roundtrip fares for this character of traffic, either on interstate or intrastate traffic. [fol. 1407] Q. So far you have dealt primarily with the matter of one-way coach fares. The railroads are here seeking not only to put intrastate coach fares on the interstate basis but are also seeking to make certain changes in round-trip fares not only in coaches but in pullman cars. Please explain the present set-up of round-trip fares for interstate travel and state what relief the railroads are here seeking with respect to their intrastate round-trip fares in coaches and pullman sleeping and parlor cars.

Examiner Stiles: Just to make clear the position of the carriers, since you have had your witness to comment upon these fares which are a concession voluntarily made by the carriers, is it your position that you have a right to make up on the civilian travel and fares that they pay for the concession that you have made, on this military business?

Mr. Oliver: No, Mr. Examiner. The position of the carriers is that the 2.2 cents per mile, which is being charged for interstate transportation, is a reasonable fare, and that it is reasonable for an intrastate transportation in Alabama, and we are not seeking to make up on civilian traffic any deficit or any loss of revenue on military travel.

Mr. Miller: May I point out the reasonableness of the intrastate rate is a matter for the Alabama Public Service Commission, is it not?

Mr. Oliver: Not in this proceeding.

[fol. 1408] Mr. Bruce: It is, in this proceeding. The Courts have held and the Commission has held time and again that the Alabama Commission is the rate-making body in Alabama. We are going into a proceeding here, Mr. Examiner, that I don't understand. It is a departure from from any Section 13 case that I have ever been in, in which these people are justifying the rates at the present time. I thought the investigation covered whether or not prejudice and preference was going to be proven by these people appearing here today.

Examiner Stiles: I think Mr. Oliver's answer to my question shows that this was put in just to present a full picture of the situation, and not as justifying the basis of the civilian passenger fares.

Mr. Bruce: I want to point out the fact that Counsel has not asked for a reconsideration of this Commission's decision, to start with. It has departed from all similar pro-

cedures by not making Exhibit 1 a copy of the record made before the Alabama Commission.

Mr. Oliver: We will be glad to have you furnish it.

Mr. Bruce: I will furnish it.

Examiner Stiles: Proceed, Mr. Oliver.

## By Mr. Oliver:

Q. So far you have dealt primarily with the matter of one-way coach fares. The railroads are here seeking not only to put intrastate coach fares on the interstate basis, but are also seeking to make certain changes in round-trip. [fol. 1409] fares, not only in coaches, but in pullman cars.

Please explain the present set-up of round-trip fares for interstate travel, and state what relief the railroads are here seeking with respect to their intrastate round-trip fares in coaches and pullman sleeping and parlor cars.

Examiner Stiles: Off the record.

(Discussion had off the record.)

Examiner Stiles: Proceed.

The Witness. Prior to October 1, 1942, in the Southeastern and other territories, there was in effect round-trip fares constructed on various basic fares per mile and with varied return limits.

With the approval of the Interstate Commerce Commission, effective October 1, 1942, the lines generally in all territories in the United States adopted two separate character of round-trip fares, i. e., one good for transportation in pullman sleeping or parlor cars and the other good for transportation in coaches only, both to bear a uniform return limit of three months from date of sale and these round-trip fares are now in effect for interstate travel.

The fares so approved in Southeastern territory for tickets good for transportation in sleeping or parlor cars are constructed on basis of 166% per cent of the one-way fare of 3.3 cents per mile good for transportation in sleeping or parlor cars, or 2.75 cents per mile for the distance traveled.

[fol 1410] The round-trip fares good for transportation in coaches are constructed on the basis of 180 per cent of the one-way coach fare of 2.2 cents per mile or 1.98 cents per mile for the distance traveled. The Alabama carriers are seeking to establish exactly the same basis of round-

trip fares for intrastate transportation in Alabama as is now in effect for interstate traffic to and from points in Alabama. To accomplish this it is proposed that the current thirty day limit round-trip fare on basis of 2.475 cents per mile and the six months limit fare on the basis of 2.75 cents per mile, both good for transportation in sleeping or parlor cars, be cancelled and that there be substituted in lieu thereof the round-trip three months limit fare on the basis of 2.75 cents per mile; also, that the current fifteen day limit coach fare on basis of 1.485 cents per mile and the sixty day round-trip coach fare on basis of 1.65 cents per mile be cancelled and that there be substituted in lieu thereof round-trip three months limit fare on the basis of 1.98 cents per mile.

Examiner Stiles: And on the F-deral transportation the present percentages would be applied to these fares

that you are proposing to now establish?

The Witness: They would be identical with the Commission's order or authority, on the same basis, yes, sir, if I understood you correctly.

Mr. Oliver: Do you refer to troop movements?

[fol. 1411] Examiner Stiles: Yes, under your percentages at the present time, you have certain fares for persons in the armed services, which are based on percentages of the established fares. Now, would you continue those precentages of these, to apply them to these new fares that you are seeking to establish? Is that correct?

The Witness: They would be on the one-way. The Federal Government, military branches, get the lowest commercial fare at all times, less these allowances, but on the

round-trips they are not allowed anything.

Examiner Stiles: These fares that you are seeking to establish would become the basis for the special fare for persons in the military service?

The Witness: If they were authorized and applicable, yes,

sir.

# By Mr. Oliver:

Q. Aside from any question of the revenue involved, would the placing of the intrastate fares on the interstate bases be of any benefit to the carriers at this time?

A. Yes, under the existing conditions it would be most helpful to ticket agents, conductors and others if the sevoral classes of intrastate fares were made uniform with the interstate fares and it would assist materially in giving more prompt service as it would require only consulting the one publication in which the character of fare, or fares, desired was published. Whereas, at present interstate fares [fol. 1412] are published in one set of tariffs and the intrastate fares in others.

It must be remembered that the personnel in the ticket offices has been greatly increased and this personnel, of a necessity, is untrained and everything that would assist in simplifying the work is to be highly desired. This same statement applies with equal force to the new personnel in the general offices.

Examiner Stiles: Now, that answer, as I understand you, goes merely to the desirability and facility of having all

the fares in one publication?

The Witness: No, no, that would not be so. They are

different publications.

Examiner Stiles: I say the answer goes to the desirability of having all the fares in one publication, rather than two, an interstate and an intrastate tariff.

The Witness: Oh, yes, in that case, yes, that is right,

Examiner Stiles: There is nothing that prevents you from putting them in one publication at the present time, is there? In other words, the carriers do have tariffs on freight, do they not, at the present time, filed with the Interstate Commerce Commission which also contain intrastate fares or charges, and are so designated in the tariff? Don't you have such tariffs?

The Witness: No, we have in the States, we have the interstate fares published, all characterized that they do [fol. 1413] not apply intrastate, but they are the interstate fares. We don't have in our interstate tariff an intrastate, tariff of fares, characterized that they do not apply on interstate traffic. I don't know whether the Commission will permit that or not.

Examiner Stiles: I asked you whether that is not actually done as to freight rates.

'The Witness: You are over my head when you talk about freight rates. I don't know anything about it, I can only confine my answer to passengers.

Examiner Stiles: Off the record.

(Discussion had off the record.)

Examiner Stiles: Let's go on with the hearing. Proceed, Mr. Oliver.

### By Mr. Oliver:

Q. Mr. Aiken, your answer went further than the Examiner indicated, as I understood it, and that was that in addition to the matter of publication, he would only have one set of rates to compute?

A. That is right.

Q. The interstate rate and the intrastate rate would be on the same basis, and it would not be 1.65 cents intrastate and 2.2 cents interstate, isn't that your answer!

Mr. Bruce: Be very careful. If you are not, I am going to introduce your tariffs.

Examiner Stiles: Let's get that clear. Does the agent compute the fare!

[fol. 1414] The Witness: The agent does not compute the fare at all. The tariffs are published with total fares, and wherever these additional amounts have been added or deducted, that is done by what we know as "conversion tables," and we could get away from that and put them all in total fares. Great strides have been made throughout the United States on that, and at the request of the Commission to put all fares in total figures, and each and every one of our individual lines publishing agents have been working to that end, to get them in that shape. A great percentage of the work has been done. It is not in effect where we have the two tariffs in effect in intrastate movements in some cases.

## By Mr. Oliver:

Q. Now, Mr. Aiken, in answer to a question I believe from Chairman White of the Alabama Public Service Commission you made a statement as to the crowded condition of trains, people standing in aisles. I understand that or are we to understand that that is a general situation all over the Southern Railway System and the railroads generally?

A. No, I think that is only a matter of instances where more people show up for the trains than the equipment is able to provide for, and we haven't additional equipment to throw in at that particular point. Q. You are doing the best you can with the situation as it exists?

A. Oh, undoubtedly.

[fol. 1415] Mr. White: Have you traveled much in Alabama in the last year?

The Witness: No, I haven't.

Mr. White: On your passenger trains?

The Witness: No, I haven't traveled in Alabama the last year.

Mr. White: How many trips have you made on passenger trains in Alabama during the last twelve months?

The Witness: My trips are not locally in Alabama, they are largely long-distance trips, where I have to go to conferences and meetings and things of that sort.

Mr. White: Between Atlanta and Washington?

The Witness: Between Atlanta and Washington, Atlanta and Chicago, and Cincinnati.

Mr. White: All right.

The Witness: Jacksonville, and New Orleans.

Mr. Oliver: I believe that is all on direct from this witness. I would like to tender in evidence Exhibits 1, 2, and 3, which have been identified by the witness.

Examiner Stiles: Exhibits 1, 2, and 3 are received in evidence.

(Exhibits Nos. 1, 2, and 3, witness Aiken, received in evidence.)

Examiner Stiles: Exhibits 2 and 3, being received subject to the objection which the record shows was made by Mr. Bruce. Off the record.

[fol. 1416] (Discussion had off the record.)

Examiner Stiles: We will take a short recess.

(Short recess.)

Examiner Stiles: You may cross-examine the witness.

Mr. Burkett: M. Examiner, before we start, may I make my appearance? I have already filled out the blank, but I have not made an oral appearance. I got in late.

Examiner Stiles: Yes.

Mr. Burkett: James E. Burkett, Post Office Box 79, Montgomery, Alabama, appearing for the Montgomery, Alabama, Chamber of Commerce, the Florence Chamber of Commerce, the Anniston, Alabama, Chamber of Commerce, the City of York, Alabama, City of Union Springs, Alabama, City of Clanton, Alabama, and the Birmingham Traffic Association, Birmingham, Alabama.

Mr. Bruce: Are you a practitioner?

Mr. Burkett: Yes, I am.

Examiner Stiles: Are you a practitioner?

Mr. Burkett: Yes, I am.

Examiner Stiles: Did you prepare a petition of intervention?

Mr. Burkett: Sir?

Examiner Stiles: Did you prepare a petition of intervention?

Mr. Burkett: I did, and Mr. Bartel returned it, and said [fol. 1417] I didn't need to, that I could appear at the hearing. Mr. Bartel has copies of it. That is we sent him fifteen copies.

Examiner Stiles: You are appearing in support of whom? Mr. Burkett: In support of the Alabama Public Service

Commission.

Examiner Stiles: All right. Proceed.

Cross-examination.

## By Mr. Bruce:

Q. Mr. Aiken, the Gulf, Mobile & Ohio Railroad, how many passenger trains do they operate in Alabama, intrastate and interstate, do you know?

A. I have no knowledge sir, but I think you will have a representative of the GM&O that can give you that in-

formation who is to appear.

Q. Didn't you state your testimony applies generally to

the respondents in the State?

A. With the exception of the GM&O and the IC and St. Louis-San Francisco Railroad, as for the coach rate of 1.65 cents per mile. They already have the 2.2 cent rate effective in Alabama.

Q. Would the same apply with reference to the Illinois Central System and the Frisco?

A. My understanding is it loes, yes, sir.

Q. You have no knowledge of their operations in Alabama?

A. I have no knowledge of the trains that they operate.

Q. You did not appear before the Alabama Public Service [fol. 1418] Commission in the investigation held before the Alabama Commission?

A. No, sir. I would be very glad to explain to you why I did not. At that time I had a very sick wife, and it was impossible for me to leave Atlanta. I have since lost her. That was the reason I was not down here.

Q. In reference to the petition that was filed by Mr. Leon Henderson, the Price Administrator, before the Interstate Commerce Commission, on August 1, 1942, was that petition filed after the Commission had made its order permitting the amendment, that is amending their former order with reference to interstate toach fares?

A. My recollection of it is that they gave us the order on August 1, 1942, to increase our coach fares to 2.2 cents per mile, and then Mr. Leon Henderson petitioned them to suspend it.

Q. In other words, the requested suspension of the tariffs naming the new fares, the new fares that had been permitted by the Commission?

A. Yes, for that to be done, yes, sir, and it was declined.

Mr. Miller: May I point out a matter of which the Commission can take judicial notice, that this tariff became effective one day before the approval date of the tabilization act of October 2, 1942, which gave the President's nominee the privilege of intervening in those proceedings? [fol. 1419] Therefore, the stabilization act was not applicable to these particular increases in question.

#### By Mr. Bruce:

Q. Did you know that the applicants before the Alabama Commission stated that the Commission had specifically approved the fare of 2.2 cents per mile in coaches?

A. Yes, they did.

Q. And do you state that?

A. Yes, sir.

Q. That the Commission specifically approved them?

A. Yes, they approved that in the Ex Parte 148 case, when they increased the fares 10 per cent, and in the 26,500 case they approved the 2 cent fares as being reasonable, and made reference to the 1.65 cent fares as not being unlawful.

Mr. Oliver: You mean 1.50? The Witness: 1.50, at that time.

# B. Mr. Bruce;

- Q. And the petition was filed by the Office of Price Administration requesting the suspension of these tariffs. Do you know what the Commission said in the order denying the suspension?
  - A. In what respect, sir?
- Q. In respect to the lawfulness and the reasonableness of the fares published in the tariffs?

A. Generally.

Q. Of which suspension was requested?

A. I can't quote it. I haven't got it in front of me, but it is a matter of record.

Mr. Oliver: I think, Mr. Examiner, the order will speak for itself, and I might also call attention to the fact that the—I don't recall, but they probably said what they say in all suspension cases.

Mr. Bruce: In other words, that the tariff was not investigated, and the lawfulness of the rates published therein had not been passed upon by the Commission.

Mr. Oliver: The order will speak for itself.

Mr. Bruce: We will talk about the order in our testimony.

#### By Mr. Bruce:

- Q. Are you familiar with the Commission's decision in ICC Docket No. 26,550; are you familiar with the order of the Commission in that case, fares and charges?
  - A. Yes.

Q. In the United States?

A. Generally speaking I am, sir.

Q. Are you familiar with it?

A. Yes, sir.

Q. In that case did the Commission state that the fare of 1.5 cents per mile was not unreasonable, nor otherwise unlawful?

A. My recollection is that they did, and I testified to that a moment ago.

[fol. 1421] Q. Did the Commission in that case state that the 2 cent fare in coaches would be the maximum reasonable fare?

A. My recollection is that is so, and also that the 3 cents

would be the maximum in the sleeping cars.

Q. Did your railroad, did the Southern Railroad specifically request the Commission in that case not to interfere with the so-called "experimental" fares of 1.5 cents?

A. We did sir.

Q. What was the condition of your revenues at that time?

A. They were at a very low ebb.

Q. What?

A. They were at a very low ebb.

Q. Were they much lower than they are now?

A. Yes, sir.

Q. Why did your system request the Commission not to interfere in any way with these 1.5 cent coach fares, do you know?

A. Yes, sir:

Q. Why?

- A. We were endeavoring to attract traffic back from the highways to our coaches which had become almost nil. And when I refer to the highway, I mean largely the privately owned car. The buses we estimated were about 15 to 20 per cent of our loss.
- Q. In other words, you were trying to attract back to your railroad passengers who were riding in private cars [fol. 1422] primarily, is that right?

A. That is correct, sir.

Q. By making the rate attractive?

A. That is right.

Q. What caused you to change your position today?

A. There is a considerable difference between today and those days. As a matter of fact, today we are trying to keep the public off of our trains.

Mr. White: Trying to do what?

The Witness: Trying to keep the public off of our trains.

Mr. White: Is that the purpose of the increase in your fares?

The Witness: No, sir.

Mr. White: From 1.65 to 2.2 cents per mile?

The Witness: That is not exactly the purpose, no. The purpose is to put it on an equality with the interstate fare,

the same as we did when we put 1.5 cents a mile into effect.

We made that interstate.

Mr. White: There has been reference made by you here to the decision of the Commission in Ex Parte 148, both the original petition, and then the decision recently issued, sometime recently issued when the case was reheard on the petition of the Office of the Price Administration. Doesn't the Commission itself in its report in this last case state that the railroads offered this increased coach fare with [fol. 1423] one purpose, to discourage travel on the train?

Mr. Oliver: Just a moment.

Mr. White: Do you know whether that is true or not?

Mr. Oliver: Just before you answer that, Mr. White, you objected very strenuously,—or perhaps I should address the Examiner. Mr. White has objected to any interpretation or any discussion of the Ex Parte 148 order by this witness. Now, he is insisting that he tell him what the order provided.

Mr. White: I am trying to ask-

Mr. Oliver: I think he is entirely inconsistent about it, to say the least.

Mr. Bruce: The Examiner overruled the objection.

Mr. White: I am not asking him to interpret the order, or the report, but I am asking whether he knows that the Commission in its report states that one of the purposes of the increased passenger fares was to discourage the public from traveling on the train. He says they are trying to discourage them.

The Witness: No, I didn't say that the Interstate Commerce Commission made any such statement. In fact to the best of my knowledge and belief they did not. The one who makes that statement, or the one who has requested it is

the Office of Defense Transportation, Mr. Eastman.

Mr. White: But you do state now the railroads are trying to discourage the public from traveling on your trains? [foi. 1424] The Witness: We are trying to comply as far as humanly possible with the request of the ODT in an effort to stop rationing of passenger travel.

Mr. White: What have you done to discourage it?

The Witness: Well, that is a difficult question to answer, Mr. White. Naturally, the public wants to go. But I presume you have read large newspaper advertisements issued by our President, Mr. Ernest Norris, one of them reading at the head he never thought he would ask people not to

ride on his trains, and it is about a five or six column advertisement, and about twelve or fifteen inches long.

Our passenger representatives have been definitely instructed that they must not solicit passenger traffic of any kind, class or description. The question of meetings which were always a great source of revenue to us in the old days, have been discouraged. We do not operate extra cars; if you please, for baseball teams. The ODT has requested the—

Mr. Bruce: Now-

Mr. Oliver: His answer is responsive to the question. •

The Witness: (Continuing)—has requested the baseball heads not to ask for mass reservations. And there are many little things like that that have been done to discourage passenger travel.

## By Mr. White:

- Q. If it is true that the intrastate fares in Alabama on the [fol. 1435] common carrier buses is lower than 2.2 cents per mile, and the railroads put on this 2.2 cents per mile intrastate rate in the Southern States, as well as they have it interstate, what will be the effect on the public as to passenger traffic on the buses?
- A. Well, that is another difficult question to answer, but I would say, human nature being as it is, it would probably seek the lowest fare. But the buses, at the same time, Mr. White, are having their difficulties in furnishing sufficient transportation to take care of anybody. We have been very glad to ask them to take some of ours.

Mr. White: All right.

### By Mr. Bruce:

Q. Now, you stated a few moments ago that in 1936 your finances were in bad shape, you needed money. Is that right?

A. No, I didn't say that. I said our passenger earnings were at a low ebb.

Q. All right, a low ebb. What is the condition of your finances at this time, do you have knowledge of that?

A. I have no knowledge, but I think we have a witness who can give you those statistics.

Mr. Oliver: We do have, Mr. Examiner, a witness who will go into the statistical data and accounting information that Mr. Bruce apparently seeks.

Mr. Bruce: I asked him the question, due to the fact he

made reference to the finances of the Southern Railway.

[fol. 1426] Mr. Oliver: Yes.

Mr. Bruce: And he is assistant passenger traffic manager of the Southern Railway, and he should have some knowledge of the financial condition.

The Witness: I have knowledge of the passenger earn-

ings, if that is what you have reference to.

# By Mr. Bruce:

Q. So you don't know that?

A. Not as to the complete financial structure of the Southern Railway System Lines, no, sir, but I can tell you what the passenger earnings are, if you would like to know that.

- Q. Did you know that the Southern Railway in its appearance before the Alabama Public Service Commission stated through its Counsel, Mr. Oliver, that the application before the Alabama Commission was to some extent a revenue case, and the other condition was the removal of prejudice? Did you know that?
  - A. Yes, I understood that he did.

Q. Do you agree to that?

A. Yes, sir.

Q. You just stated you were trying to divert traffic away's from yourself at the present time. Was that one of the reasons you raised your fares?

A. I think that is a very simple thing to answer.

Mr. Oliver: I think now, if you will pardon me, Mr. Examiner, the witness made no such statement. He did make [fol. 1427] the statement that the railroads were trying to discourage travel.

Mr. Bruce: What's the difference?

Mr. Oliver: In answer to a question from Mr. White as to whether or not the purpose of this increase was to drive people off trains, he distinctly said "No."

Mr. Bruce: I am going to ask Counsel to state to the Examiner now on what grounds he appeared before the Alabama Commission in the application for the increase of coach fares, and other fares.

Mr. Oliver: We are not trying that issue, Mr. Examiner.

Mr. Bruce: We are trying that issue. Mr. Examiner, we are before the Commission today—

Mr. Oliver: I don't mind stating it now if the Examiner wants to hear from me on the subject. I am perfectly will-

ing to make the statement.

Mr. Bruce: I have made a request. Unless the Examiner overrules my request, you state upon what grounds you appeared before the Alabama Commission.

Mr. Oliver: Do you want to hear from mr, Mr. Examiner,

on the subject?

Examiner Stiles: I will leave it to your judgment to

state it or not, as you like.

Mr. White: I think, if you are going to offer the transcript of testimony before the Commission in that case, which [fol. 1428] counsel says he—

Mr. Bruce: I withdrew the question. I will place the

record before the Examiner as an Exhibit.

Mr. White: It will show what happened.

### By Mr. Bruce:

Q. You stated, of course, that you did not know why the Frisco and the Gulf, Mobile & Northern and the Illinois Central had kept their fares at 2.2 cents per mile.

A. I didn't make any such statement as that, because I

do know.

Q. Do you know?

A. Yes, sir.

Q. Why?

A. They followed the lead of the Western Lines.

Q. In other words, their operation is principally in the

Western District, isn't that right?

A. No, their operation is largely in the Southeastern Territory. I described the Southeastern Territory in my testimony as being that territory lying east of the Mississippi and south of the Ohio and Potomac Rivers, and the GM&O operates exclusively in that territory with the single exception of getting into St. Louis, but I did say it included the gateway; and the St. Louis-San Francisco is in the same boat.

Q. Tell me why they maintain higher fares in coaches

than the Southern, if you know.

A. That is a matter of judgment of the traffic officers of [fol. 1429] those lines. They wanted to keep their line on a uniform basis all the way through.

Q. Their lines where on a uniform basis?

A. The Illinois Central, for example, in their operation north of the Ohio River, north of Cairo. The Frisco operates west of Memphis.

Q. That would be out of the southern region?

A. Yes.

Q. What part of Louisiana is in the southeastern district?

A. That portion lying east of our lines—I don't know as I can tell you offhand.

Q. A very small portion?

A. A very small portion is in Louisiana, because we only have a very small mileage in Louisiana.

Q. The other portion would be in what district?

A. In the Southwestern Passenger Association District.

Q. Did you appear before the State Commission of Florida?

A. No, sir.

Q. Louisiana?

A. No, sir?

Q. Mississippi?

A. No, sir?

Q. South Carolina?

A. No, sir?
Q. Virginia.

[fol. 1430] A. No, sir. I have explained the reason why I did not, though.

.Q. Tell me why! You have explained already!

A. Yes, I explained to you why I did not come to Alabama.

Mr. Oliver: And the same reason applies to the other States?

The Witness: And the same applies to all of the other Stafes.

# By Mr. Bruce:

Q. Do you know whether or not these States held an investigation?

A. Yes.

Q. Are you familiar with the matters before these Commissions of record?

A. Yes, I have testified that certain of these States, gave the names of the States, had already granted the petitions,

and the other States in which the petitions were not made because the law did not require it, those tariffs were filed, and they did not suspend. The hearings had not been held, and the decision of the regulatory bodies had not as yet been released in some States, and Mr. Oliver has told you that since that time Kentucky has declined the petition, and a Thirteenth Section request has been placed before the Interstate Commerce Commission.

Q. In other words, their laws are such that they could not do very much about these fares, whether they wanted [fol. 1431] to or not, isn't that right?

A. No, I don't understand that to be the case in all States.

Q. Can they suspend the tariff, any of these States suspend the tariff?

A. They id suspend it.

Mr. White: I think that is a question of law, Mr. Bruce. The Witness: I think so too, and I am not capable of answering it.

Mr. White: Probably the witness would not be able to

advise us about the law.

The Witness: I know that they did suspend them.

## By Mr. Bruce:

Q. Now, let us talk about your so-called de luxe trains. What trains does the Southern operate in interstate commerce that contain this so-called air conditioned, de luxe equipment, through the State of Alabama, in interstate commerce?

A. The Southerner, which is a streamline train from New York to New Orleans, the Tennesseean, which is a streamline train from Washington to Memphis. Those are the only two fully streamlined trains that the Southern Railway operates in Alabama. They both pass through Alabama.

Q. Where does the first one come into Alabama, what is the first point in Alabama that your first train that you mentioned just now touches Alabama?

A. It comes in over on the Birmingham Division at the

[fol. 1432] Georgia-Alabama State Line.

Q. Where does it go out at, the last point in Alabama?

A. It goes out at the Alabama-Mississippi State line.

Q. Do you know the stops made by that train in Alabama?

A. They are a matter of record. I think Mr. Oliver gave you those. I don't all of the detailed stops, no.

Q. Do they make one, two, or three, or a half dozen stops, or what?

A. I can tell you.

Mr. Oliver: Give him that information.

Mr. Bruce: I want to know.

Mr. Oliver: It is not on the record. Off the record.

(Discussion had off the record.)

The Witness: No. 47 stops in Anniston, Alabama, Birmingham, and Tuscaloosa.

#### By Mr. Bruce:

Q. Three stops in the State of Alabama?

A. Yes, sir.

Q. Now does a passenger have to have a reservation to get on the so-called revolving seats of yours?

A. Yes, six.

Q. And these air conditioned cars?

A. Yes, sir, the space on the train is limited, and it is all reserved.

Q. You don't pick up any passengers at any intermediate point in the State of Alabama, in crossing the State, with [fol. 1433] the exception of the three points, or discharge passengers, except at those points, do you?

A. That is the only points they stop at, unless some stop

is made at some other point for operating reasons.

Q. Do you know whether there has been any available space in the past year for Alabama passengers, in intrastate commerce?

A. Intrastate? Or interstate, did you say?

Mr. Oliver: Intrastate, he said. .

The Witness: No, the space is assigned I believe to the individual offices, and they use it to the best advantage. For instance, Birmingham might have space assigned to it and use it to Anniston, and turn it over to Anniston to use for some place else.

Q. An Alabama passenger who resided at any point else than these three points would not have access to your service offered on that train? A. He would have to go to one of those points to get on to it.

Q. He would have to wait for another train, or use his own means of conveyance, is that right?

A: Whatever mode of transportation he wanted to use.

Q. Now, the other train that you mentioned as serving Alabama, where does that come in at?

A. That comes in at the Tennessee-Alabama line. I think it is Stevenson, but I want to be sure. That is is right, it comes in at Stevenson.

[fol. 1434] Q. What is the name of that train, is that the Tennessean?

A. That is the Tennessean, yes, sir.

Q. How many stops do you make in Alabama on that train?

A. It stops at Stevenson, Scottsboro, Huntsville, Decatur, Sheffield, and Tuscumbia.

Q. Where do you go out of the State, at what point?

A. At the Tennessee-Mississippi line, at about Cherokee.

Q. Does an intrastate passenger have access to that train excepting at these points?

A. No, sir, excepting that he gets to those points and boards it there.

Q. Has the loaded condition been practically the same on that train as it has been on all of the other trains?

A. Yes, sir, we are running fairly close to capacity at all times.

'Q. Is the passenger required to have a reservation prior to the time he can ride in a coach on that train?

A. Yes, sir.

Q. From your experience as the assistant traffic manager, traffic manager of the Southern Railway Company, would you say that there has been any space, or has it not been any space in these two trains that you have testified about!

A. There has been space, of course.

Q. What?

A. There has been space.

[fol. 1435] Q: There has been space?

A. Yes.

-Q. For Alabama passengers?

A. Yes, from Birmingham, we would have pasengers on that all the while.

Q. Haven't you-

- A. Space is assigned to Birmingham regularly on that train, in both directions.
- Q. Do you have assigned space at Birmingham for these trains?

A. Yes, sir.

Q. How many berths?

A. I couldn't tell you the exact number of seats assigned; no berths at all on the train, it is an all-coach train.

Mr. Bruce: Are you going to have somebody to testify that will know about that, Mr. Counsel, besides this witness?

Mc. Oliver: I rather doubt it.

The Witness: You see what actually happens is, should there be any sold space coming into Birmingham, it is like on all trains, it is telegraphed ahead to the next point that the trains stops at, and is used from that stop. If it is not used there, it is telegraphed to the next stop. That is not unusual in any operation of any train.

#### . By Mr. Bruce:

Q. Did you state in your testimony in answer to one of Mr. White's questions that these trains are all loaded today, that your wash rooms and aisles, and so on, were usually [fol. 1436] crowded with passengers?

A. I said that there were times that they were, yes, sir;

not always, no.

Q. Do you want to change your testimony at the present time and state there is space on these trains for intrastate

passengers?

A. I didn't make that statement, I made the statement that at times all of the space, all of the smoking rooms and the club cars were occupied, but that was not every day. I might amplify that a little bit, but that is what I intended to convey by what I said.

Q. On page 8 of your statement, in answer to the second or third question on that page, you stated "No" there. "Do you, as an experienced railroad passenger traffic officer, know of any reason which would justify the maintenance of a fare of only 1.65 cents per mile in intrastate coach transportation within the State of Alabama, when an interstate passenger traveling to or from points within the State is required to pay 2.2 cents per mile" and you stated "No". Now, on what grounds tdid you arrive at that conclusion?

A. I think the grounds of equity to start with. There is not any particular reason why a man riding from "A" to "B" which is interstate should ride from "B" to "C", which is intrastate, at a less rate per mile.

Q. Suppose the man riding from "A" to "B" didn't [fol. 1437] have any room to get on the train unless it hap-

pened to be a section of a third class train?

A. That is a supposition. I cannot answer that just exactly, what you have in mind. The train operates, and it is like a hotel, when you go in, if its capacity is filled up, that is just the answer, there is not anything more. We experienced that yesterday when we arrived at Montgomery. We had to wait until last evening for the rooms, to get located.

Q. In your illustration of fares between Birmingham and Chattanooga, Tennessee, do you know of anybody—and I want his name, and I want to know where he lives at,—that has used the combination of an interstate and and intrastate fare to defeat interstate commerce?

A. I testified, Mr. Bruce, to the fact that I didn't know, but it was common knowledge that that thing was in-

dulged in.

Q. Have you ever had an agent tell you that they sold that kind of a ticket?

- A. No, I have never had an agent tell me that, but I have had an agent ask me if he couldn't do it, and I have told him no.
  - Q. You told him that he could not?

A. That he could not.

Q. Because it was unlawful?

A. That is right.

- Q. Would the same apply on a ticket, one-way coach ticket, from Birmingham, Alabama to Chattanooga, Ten-[fol. 1438] nessee—in any of your illustrations that you have made here in your testimony, do you know the name of any one, and his residence, that has used that combination?
  - A. No.

Q. To travel on?

A. I have stated several times I did not know.

Q. So that as far as you are concerned, it is a theory that he could do it, but you don't know whether any one has or not, is that right?

A. I said that it was a matter of common knowledge that it had been done, but that has only been from my own representatives.

Q. I presume that you were a ticket agent at some time or other?

A. Away back in the Dark Ages, yes, sir.

Q. Would you say that 99 per cent of the traveling public would know anything about a railroad fare, that travels?

A. A great many of them do. I don't know what the percentage is, but a great many come in and ask for it.

Q. What percentage is it?

A. I would not try to estimate it.

Q. I am asking your opinion?

A. I wouldn't know.

Q. You have no opinion?

A. I have no opinion on it, no, sir.

Q. You stated you have issued instructions to your [fol. 1439] agents when they requested that authority that they could not use this combination intrastate-interstate?

A. Not only that, but I have stated to them they cannot use what we know as "split tickets", issue one ticket to one point, and re-issue another from that point in order to defeat a through rate."

Mr. White: I would like to ask the witness this question.

#### By Mr. White:

Q. You stated several times in your testimony that it is a matter of common knowledge that some people have defeated the interstate rate by coming into a State on the interstate fare, and then buying an intrastate ticket. Now, just tell the Commission how you base your statement on it being a matter of common knowledge.

A. Well, individuals go into your offices, and they make

inquiries.

Q Vou say you have not been a ticket agent since the Dark Ages?

A. That's right.

Q. What are you testifying about now?

A. I am testifying because my representatives passed that information along to me. It is quite impossible for one individual to be at all ticket offices on a railroad the size of ours.

# By.Mr. Bruce:

Q: Now; in line with your statement just now, what amount have you been deprived of in revenue due to the [fol. 1440] fact that the Alabama Commission did not grant the 2.2 cents per mile fare!

Mr. Oliver: Mr. Examiner, we have a witness who is going into that quite fully.

Mr. Bruce: Wait a minute. I didn't quite get through with my question.

Mr. Oliver: All right.

# By Mr. Bruce:

- Q. (Continuing)—because of such violations as you have pointed out here, if any?
  - A. I have none, sir.
  - Q. You don't know?
  - A. No, nobody knows.
  - Q. Nobody else knows?
  - A. It is an unknown quantity.

Mr. Oliver: Off the record.

#### (Discussion had off the record.)

# By Mr. Bruce:

- Q. In your Exhibit 2 then, all of the examples that you have named here are theoretical only, isn't that right? It could be done if a man knew how to do it?
  - A. They are so headed.
  - Q. And if he could deceive your agent-
  - A. They are so headed there,
- Q. Supposing that your agent here saw a passenger train that arrived at the border point in Alabama, and the passenger had come in from interstate commerce, and the man [fol. 1441] would get off that train, and he would go into your station; would your agent sell him a ticket to continue that interstate travel?
  - A. He wouldn't know anything else.
  - Q. I said if he saw him get off the train.
- A. Of course, he would sell it to him. He wouldn't know where he came from. He might be an interstate passenger, and he couldn't refuse it anyhow.

Q. You have never issued instruction to your agents not to sell that kind of ticket?

A. No, sir.

Q. Do you know of any instance where one of your agents did sell such a ticket?

A. No, I never heard of him selling it.

Q. You never heard of any of them selling that kind of a ticket?

A. No.

Q. That would be true of every one of the illustrations you have made in three pages, or four pages, of your Exhibit No. 2, is that right?

A. Yes, sir, that would be absolutely correct, I don't

know of a single one in which it has been done.

Q. And the same would be true of Exhibit No. 3, is that right?

A. No, Exhibit 3 is an entirely different story. Exhibit No. 3 shows the intrastate fare at a certain fare, and the interstate fare at a higher rate.

Q. I beg your pardon? [fol. 1442] A. Yes.

Q. Your entire statement is based, as to your Exhibit No. 2, it is based upon the supposition that somebody might do that?

A. Mr. Bruce, it is so headed.

- Q. Now, at these points, these border points in Alabama that your passenger trains arrive at in interstate commerce, are these stations open 24 hours a day, or 8 hours, or how long?
- A. I don't know whether they are or whether they are not but I think you are not looking at this time in a broad angle. It is not always at the State point that this thing can be done. Going back to your statement a minute ago about the streamliner out of Birmingham, a person can come in from some road leading into Birmingham, buy an intrastate ticket to Birmingham, go over to the Southern Railway station and buy an interstate ticket and defeat the interstate fare from the point that he started from.

Q. Between what two points?

- A. Any two points. There are hundreds and thousands of them.
- Q. You didn't make an illustration here. Are you positive of that?
  - A. At all big distributing points, that is true.

Examiner Stiles: Don't you think you have dwelt long enough on that point? The witness has told you that all of those cases are theoretical, that is not evidence of particular instances. You have required him to state that over [fol. 1443] and over. It occurs to the Examiner that you have spent enough time on that point.

Mr. Bruce: Mr. Examiner, the Commission made that statement in a number of cases that I know of, of course, but there was not an unlawful condition when the Commission made that statement. I shall give you a lot of citations which show that, in my testimony, where the Commission and the Court said time and time again that these conditions cannot exist, because it is an unlawful condition. You cannot make theory out of an unlawful condition.

Examiner Stiles: Mr. Bruce, perhaps you didn't understand me. I say in the opinion of the Examiner you have dwelt with the witness on that point until you have fully exhausted it. I think you should pass on to some other point in your cross-examination.

Mr. Bruce: The reason I asked about the opportunity of an agent doing that, you would have the opportunity of buying at some point to bring about that condition, and the witness of course knows that.

The Witness: That is what I have been testifying to all day.

#### By Mr. Bruce:

- Q. Supposing now that one of your conductors was asked by a passenger to sell him a ticket to continue an interstate journey, would your conductor sell him a cash fare ticket? [fol. 1444] · A. In the first place, I don't think the passenger would ever ask any such question. In the second place the conductor would not know. He would pull his cash fare ticket from wherever he was tendered his money.
  - Q. You never put out a bulletin to any of your employees, station or otherwise, that such condition is unlawful?
  - A. No, we have not tried to police this thing, because as I have said in my testimnoy, it is an absolutely impossible thing to police.
- Q. I am going to ask you if you know of a single instance in which an intrastate train has been operated as an extratrain in Alabama to transport intrastate civilian passengers during the last year?

A. I have no knowledge of that, but I think perhaps our operating witness may be able to tell you something about that.

Q. You made a statement here that you did have knowledge?

A. In what respect?

Mr. Oliver: May I have that last question read please?

(The question was read.)

Mr. Oliver: No, the last one before that.

(The previous question was read.)

The Witness: He means absolutely intrastate, that is his question as I got it, between two points wholly within the State.

#### By Mr. Bruce:

Q. To points wholly within the State?
[fol. 1445] A. We know of many cases where our trains have been operated interstate that accommodated Alabama passengers, yes.

Q. Do you know or do you not?

A. Yes, I know second sections have been operated many times.

Q. To accommodate intrastate civilian passengers?

A. No, interstate passengers coming from Alabama.

Q. I asked you about intrastate civilian passengers?.

A. Yes, and I answered you that I did not know anything of any such instances of that sort. Perhaps our operating witness could tell you about it, I said.

Q. Your troop train movements, most of that is operated on a second or third section of your regular train, isn't that right?

A. No, sir, it is operated as a special in many, many cases, and the others as sections.

Q. As sections?

A. Yes.

Q. On your interstate civilian trains of all classes you have so-called "party military movements" on these trains, do you not?

A. Have priority military movements?

Q. No, party military movements?

A. Yes, we operate many extra cars on our regular trains for the accommodation of military traffic, and many of the military personnel also occupies space in the regulation [fol. 1446] lar line cars, coaches and sleeping cars.

Q. Do you give them priority on seats and on berths?

A. No, sir, only the Fourth Service Command and the Army Service in Washington have requested it be done for definite and most essential travel. For that travel we have established what is known as Military Reservation Bureaus. It is manned by competent men, who look after nothing but that character of reservation, which is also an additional expense that I did not mention because I did not care to bring that out. As long as you ask the question, I am telling you.

Q. Let me make an example. Suppose there was a movement of twenty men in uniform with one party ticket military party ticket, moving from Montgomery to Washington, D. C. Would you give that party priority on reservations?

A. That party would be taken care of, yes, sir, eitherby the operation of an extra car, or in the regular equipment if it was available. If not available, we would furnish a coach.

Q. And they would be served ahead of civilian passengers, is that right?

A. Absolutely:

Q. I think that is proper, I am not questioning that. And they would travel at the so-called Government rates, which governs the movement of military passengers traveling under orders, is that right?

A. If they are traveling under orders, yes, sir.

[fol. 1447] Q. Yes, sir.

A. That is exactly what would be done. If they were on furlough, of course they would pay less.

Q. The so-called furlough travel, they travel on the same train that civilian passengers travel on, on your interstate and intrastate trains, do they not?

A. That is right.

Q. They pay 11/4 cents fare?

A. That is correct.

Q. Do you know how much of your passenger traffic that is composed of at the present time, between points that

have military establishments, and other points in intrastate commerce?

A. No, it is not separated, and it is not humanly possible to separate it because of the manpower situation in the

accounting departments.

Q. You have no knowledge whatsoever as to how many of these people traveling in each one of these passenger coaches are traveling on the 1¼ fare, or you don't know how many civilian passengers are in that car, or you don't know whether there is a military party traveling under orders in that car either, do you?

A. Yes, we know what they are, but we don't know, when you get down to summing it up and dividing it as to the rate per mile on each class that you refer to, we don't know

[fol. 1448] that, no.

Q. You talked here about the disabilities of the Southern in regard to the handling of troop movements, that is the extra space, and so on. What extra space, I want to know how much of that is caused by the so-called military movements, both Navy and Army, do you know?

A. I have tried to explain that in a general way in my

testimony ..

Mr. Oliver: We have an operating witness that I think can answer it.

Mr. Bruce: This man has talked about that, and he is the assistant general passenger agent. I want to know, and I

don't want any interference.

Mr. Oliver: Now, just a moment. You are perfectly at liberty, and I am not trying to stop you from asking this witness anything that you want to as to anything he testified about on direct examination, and cross examine him about it, but when you go beyond that I have the right to object and I expect to.

Mr. Bruce: The witness has the privilege to say "I don't

know.".

# By Mr. Bruce:

Q. Do you know?

A. I have told you, Mr. Bruce, what I have testified to, and the testimony speaks for itself.

Mr. Bruce: He said here, Mr. Counsel, because of the [fol. 1449] volume of military, as well as civilian travel, the railroads have been compelled not only to increase their

office forces, and so forth and so on. Therefore you made him subject to cross examination. Isn't he, Mr. Examiner? Examiner Stiles: What is the question that you have pending?

Mr. Bruce: I have forgotten it.

(The record was read.)

The Witness: I do not. No, I can't tell you that.

By Mr. Bruce:

Q. You don't know how much increase in the general office force that has created, do you?

A. Yes, I can give you my own knowledge. It has increased about 50 per cent. In our Atlanta City ticket office it has increased three or four hundred per cent. We had six men in the ticket office and we now have twenty some odd. Birmingham is the same way, though not quite so heavy. In Cincinnati and Washington we have employed 85, and are employing more, young ladies, we are trying to make ticket agents out of them.

Q. Is that because of the military movement?

A. Largely so, yes, sir.

Q. I notice here you said, so far as coach travel is concerned, the lowest charge ever made by the railroads, materially increased the cost of service. Will you strike that? "While the monies expended for these improvements have provided additional comforts and conveniences to the travel-[fol. 1450] ing public at, so far as coach travel is concerned, the lowest charges ever made by the railroads, it has materially increased the cost of service". How does that apply in reference to the intrastate passengers, in Alabama, this increased cost you are talking about?

A. It would run to all character of improved equipment, if and when operated. For example, with our air condition equipment, when we air condition a coach, and we have 189 of them, it runs somewhere between six thousand and seventy-five hundred dollars to do that. That is an additional expense. And instead of getting 3.6 cents per mile, which we did in 1929, we are getting 1.65 cents today on inter-

state-I mean intrastate.

Q. Didn't you have air conditioned coaches in 1939 and 1940?

A. This runs about that same period.

Q. Wasn't that fare then 1.5 cents per mile?

A. Yes, sir, but conditions were materially different then than they are today.

Q. How is it different?

A. Mr. Bruce, I think you understand, you have asked the question several times, when we put in these experimental or subnormal rates, they were put in to meet the highway competition, largely the privately owned car. Today the privately owned car does not operate and the necessity is not there, we need the space for military personnel and for civilian transportation. That is the reason for it. The conditions are nowhere near the same as they [fol. 1451] were before the war.

Q. Because of that you are attempting to better your earnings, because of a condition that has come about through the lack of rubber and gasoline and whatnot, isn't that

right?

A. No, we are attempting to put our rates on an equality with the interstate rates, so far as the State of Alabama is concerned.

Q. Supposing that the war ends—here is a theory, but it should be proper, due to the fact you are assistant traffic manager of a great railroad system,—suppose the war ended on January 1, this year. Would you ask the Com-

mission to restore the 1.5 cent rate?

A. Mr. Bruce, you know you are asking a question that I think anybody in the world would love to know, and in any industry. I think Mr. Roosevelt would be delighted to know what he would do after the war ends, if he could. Certainly I don't know what we will do after the war, I don't know what the postwar conditions are going to be, but if they require reducing rates to get back our traffic, I think you will find the passenger traffic, or the passenger department would be just as alive then as they have been heretofore.

Q. If conditions after the war were substantially the same as they were in 1940 and 1939 and 1938, would you restore

your rates then, your fares, to 1.5 cents?

A. I don't know, Mr. Bruce, but I do think it would be [fol. 1452] largely predicated upon the financial condition of the carriers. To start with, our equipment is getting a terrible pounding, and it is being used to the utmost. It is being worn down, and when the postwar conditions arrive, the chances are a great deal of it will have to be scrapped. There may be a new character of equipment developed, as

has been done in the past few years with the streamliners. Nobody knows. I wish I did know. If I did, I wouldn't have to be worrying about railroading, I don't think.

Q. How many local trains does the Southern operate in

Alabama?

A. We have an operating witness that will give you that.

Q. What?

- A. Our operating witness will give you that.
- Q. You don't know about that then. Do you know anything about service on these local trains?

A. No, I haven't ridden them.

Q. Or the appointments on these trains?

A. I haven't ridden any of them.

- Q. You are talking about them?
- A. Yes, I am talking about them.
- Q. You state that there is available in certain cars on certain trains maids, and hostesses and revolving seats and cups, and so forth and so on. Now, are these appliances available on the local trains that you operate in Alabama?

A. You didn't listen to my testimony. I told you that [fol. 1453] was on the streamliners, I didn't tell you any-

thing about local trains.

Q. Don't you have it on other trains?

A. I am not familiar with what is on these local trains. We are going to have an operating witness that will tell you just what is on them.

Q. You don't know how many air conditioned cars

A. No doubt that information has been furnished to the Alabama Public Service Commission by Mr. Oliver, by letter.

Q. I want you to tell me.

A. Well, I don't remember. I have got a copy of it here that I can read to you if you would like to have me read it to you.

Q. Troop train movements in intrastate commerce in Alabama, due to land grant rates, would they or would they not have a lower rate than 1.65 cents per mile?

A. In coaches, yes, sir.

Q. In coaches?

A. Yes, in coaches. On the AGS Railroad it would be 50° per cent from the Georgia State linecto the Mississippi-Alabama line.

- Q. I don't suppose you know anything about terminal delays occasioned by troop trains?
  - A. Unfortunately I do.
  - Q. You do?
  - A. I have seen lots of it.
  - Q. Let's talk about terminal delays.
- A. I have nothing to do with the terminals. You asked [fol. 1454] if I knew anything about the delays, and I do know that that has existed.
  - Q. In what way?
- A. Trains backing up, many of them, in the terminal. We had it happen yesterday coming out of Atlanta. We were an hour and something late because of additional trains in the terminal.
- Q. I presume you know about the empty car movement occasioned/by military movements, is that right?
  - A. What do you mean by "empty train movements"!
  - Q. I am going to ask you a question.
  - A. If I can answer it, I will be glad to.
- Q. I hope you can. If you had a train moving between Montgomery, Alabama, and Atlanta, Georgia, would you have a 100 per cent full train movement both ways, going and coming?
- A. If I had a train from Montgomery to Atlanta, would I have it both ways?
  - Q. Yes, handling troops.
  - A. I don't know as I quite get your question.
  - Q. Would the return movement of these cars be empty?
- A. They are liable to be empty, yes, sir. They are liable not to be sent to Atlanta, they are liable to be sent to Camp Blanding or Little Rock.
- Q. In other words, your empty train movement has been considerably increased because of troop movements, isn't [fol. 1455] that right?
  - A. Yes, sir, a lot of extra trains are being operated.
  - Q. Would that be true of civilian passenger movements?
- A. No, not to such a great extent. There might be some extra equipment operated that would have to come back in deadhead service, but generally it would filter back in regular trains.
  - Q. For handling of civilian passengers?

Q. Do you know the amount of the land grant rates applicable on the land grant mileage of the Southern in Alabama?

A. On the Southern it is from Selma to Jackson, a distance of 145 miles. I testified to that.

Q. That is 50 per cent, isn't it?

A. 50 per cent all over the United States, where land grant is involved. There used to be some free land grants, but there is not any such thing any more.

Q. Now, about your tariffs, don't you file with the Alabama Commission and with other Commissions all over the

system individual intrastate tariffs!

A. Yes, sir, we file with you, or with the Alabama Commission any one of our tariffs; we have no reason to hold them out from you.

Q. You do so in Georgia and in other States?

A. Yes, sir, I think I sent you a set of our Georgia tariffs

the other day because you asked for them.

[fol. 1456] Q. Yes, I have them. On page 16 of your testimony, in the second paragraph thereof, of your statement, you make reference there to existing conditions that would be helpful to a ticket agent. What are those con-

ditions, if it is not in regard to the tariffs?

A. The existing conditions, Mr. Bruce, refer largely to the manpower situation. You, of course, appreciate that on trains today there are many new men that are handling them, and they have a great deal of difficulty to start with in reading tariffs. And when tariffs are complicated and they have to have several different kinds of tariffs to determine what the intrastate and the interstate rate is, they become very greatly confused. You shake your head as if you didn't believe that, but if you sat where I sit, you would know it.

Q. I was a ticket agent myself for a great number of years. You have just stated you did not publish your intrastate rates in the same tariffs as you do your inter-

state rates?

A. In so far as Alabama is concerned, heretofore all of our fares have been in the interstate tariffs. At the present time our intrastate fares in Alabama are in interstate tariffs, but those interstate tariffs have been canceled so far as interstate commerce is concerned, and new interstate tariffs filed. So therefore they have the old tariff in effect which they must refer to in order to get the intra-

state rates. They go to the new tariff to get the interstate rates.

Q. You mean to say you use a mileage scale in estab-[fol. 1457] lishing the amount of the fare at the presenttime!

A. No.

Q. The same mileage scale would apply!

A. No, I didn't make any such statement. Ortiginally the passenger fares were built on a mileage scale. From time to time as changes one way or the other, up or down, have occurred, as an expedient it has been done through the expedience of what is known as "conversion tables." Where the given fare published is such and such an amount, the new fare will be so and so. That has been carried on in the re-issue of all these new tariffs. We have put in the total fares on that same sort of basis, so that there might be and probably is some discrepancy as to the actual mileage structure.

Q. How would you quote a rate between Montgomery and any point east on your system in Alabama, where you would have a conflict with quoting the same rate in inter-

state commerce?

A. We would first go to the tariff in effect on the intrastate basis in Alabama.

Q. You couldn't have two rates together, interstate and intrastate, could you?

A. I didn't say they were together, Mr. Bruce. You are putting something in my statement that I didn't make. I said they were in separate tariffs all the way through.

Q. You said certain rates were published in your interstate tariff?

A. They were interstate tariffs. [fol. 1458]

Q. There are no intrastate rates in these tariffs?

A. If you will look in your file you will find Chairman Dugan's "A" tariff, with a fariff of probably five or six hundred pages in it. That tariff will be canceled in its entirety except for intrastate rates that have not been changed in certain States. When he wants an interstate fare from Montgomery to Washington, he goes to the new tariff. When be wants an interstate, interline fare, intrastate, he goes to the old tariff, so that he does have to have two tariffs.

Q. As a matter of fact you have three now, don't you!

A. 'It may be in some cases, yes.

Q. Then there would be no inconvenience so far as the agent is concerned, because he would have to look into either one, two or three tariffs anyway, that is to accommodate the passenger as to his particular need, isn't that right, he would have to look in one anyhow?

A. I think as a practical thing you will agree it would be much nicer, you know yourself, if you could pick up one tariff and find all of the fares, interstate and intrastate,

it would tickle you to death.

Mr. Bruce: That is all I have with this witness.

Examiner Stiles: Is there any other cross examination?

Mr. Miller: I would like to ask a few questions.

By Mr. Miller;

Q. Will you turn to page 2 of your prepared state [fol. 1459] ment?

A. Yes.

Q. You testified there that the experimental rates were put in to attract travel from other forms of transportation, particularly private automobiles and buses. Would you say that depression occurring after 1929 had anything to do with the lowering of those rates?

A. I would say it had all to do with it, because the people began to ride in their privately owned cars to save

money.

Q. Do you think it is true that the increase in travel at the present time by private individuals is at least partially due to the fact that their income is increased, in addition to the fact that their private automobiles are not available?

A. I just don't know as to that, sir. I presume it does have some effect, but as to what amount it has, I wouldn't

like to say.

Q. Now these 1.5 cent coach rates which were in effect from 1933 to 1937 were increased in November, 1937, to 2

cents per mile. Why was that increase made?

A. It was made with the thought that some of the costs that were being incurred, created in establishing certain new improvements might be at least partially over come. It however did not prove to be a fact. In fact it was just the reverse, and we went back to the subnormal fare of 1.5% the experimental fare.

[fol. 1460] Q. From the standpoint of revenue during those particular times, the 1.5 rate was advantageous?

A. Yes, yes, sir, it didn't pay anywhere near its way, so far as the value of the service was concerned, but it was better than what we were getting, in other words a little bit of a loaf is better than rone at all.

Q. Do you know the appre imate competitive level of the motor bus rates?

A. No. sir.

Q. In this territory?

A. No, sir, I have not looked into that.

Q. You don't know approximately even?

A. No, they have always been considerably lower than ours, anywhere from 25 to 50 per cent, depending on where they were going to. That used to be their structure; I don't know what it is today.

By the way, may I clarify one statement? You asked me if the depression had an effect, and I said yes, that had a lot to do with it. What I meant by that was that it was simply an added burden on the carriers because of the general automobile, trend of traffic to automobiles. So far as the general depression is concerned, just whether that had anything to do with turning to automobiles, that is an unknown quantity.

Mr. Miller: That is all I have.

Examiner Stiles: Is there any redirect examination? [fol. 1461] Mr. Oliver: I have just one or two questions, Mr. Examiner.

Redirect examination.

## By Mr. Oliver:

Q. Mr. Bruce asked you a question with reference to your streamliner trains, several questions with respect to your streamliner trains, and the availability of these trains to intrastate passengers within Alabama. I am not certain whether you made it clear as to the opportunity of intrastate passengers to use these trains. You stated I believe that the train that you referred to as the "Southerner" makes stops at Anniston, Birmingham, and Tuscaloosa?

M. That is correct.

Q. You stated that Birmingham had assigned space. Is that true of Anniston, Alabama?

A. I think that they do, Mr. Oliver, but just what amount I don't know. And I think that is true at Tuscaloosa to some extent.

Q. Let's go to the train you referred to as the Tennessean, streamliner train that stops at these places, many other places, at Huntsville, Decatur, Sheffield, and Tuscumbia.

A. Five or six places, yes.

Q. Do you know whether or not there is assigned space on that train at all of these points where it stops?

A. I can't answer that definitely, Mr. Oliver. I imagine that they do have one or two seats assigned to them, but I can't say definitely.

[fol. 1462] Q. Suppose a passenger at Decatur, for instance, whether or not they have assigned space at Decatur, wanted to make a trip to Birmingham, or rather wanted to make a trip to Sheffield on the streamliner, could be, through advanced reservation, obtain passage on that train, or transportation on that train?

A. Oh, yes. What he would do, Mr. Oliver, is this, Chattanooga, Memphis, and the other cities on the route have the majority of the space in that train. As you know, we have our own long-distance telephones between all these points, and that agent at one of the points where the train stops, if he had one and it was sold, and he wanted another one, he would pick up the phone and ask Chattanooga to give him another space. That goes on all day long, all the way from Washington to New Orleans.

Q. So that the intrastate passenger would have an opportunity to use that train?

A. That's right.

Q. I am afraid the inference was left on the record that it was only the interstate passengers that had to make a trip to Decatur for instance who could get on that twin. Wouldn't the interstate passenger have to do the same; thing?

A. Yes.

Q. Wouldn't the interstate and intrastate passenger have to make exactly the same trip to board that train?

A. Yes, I think I made that clear, any passenger, intrastate or interstate would have to go to where it stopped to [fol. 1463] get on it.

Q. You referred to these questions relating primarily to these, what Mr. Bruce termed "De Luxe trains," by which he meant the streamliner and the air conditioned equipment on those trains. Those are not the only trains that you operate in Alabama, are they?

A. Oh, no, many through trains are operated into Ala-

bama.

Q. Aren't other trains equipped with air conditioned cars also?

A. Yes, sir, yes, sir.

Q. Are those trains available to intrastate passengers in Alabama?

A. Yes, sir, every place that they stop.

Q. Do they get exactly the same service as the interstate passengers?

A. That is correct.

Mr. White: When you say "the same service" as the interstate train, do you mean they have an engine pulling some cars, that moves the cars from one station to another? Is that what you mean by using the term "same service"?

The Witness: I mean that they have the very same train that the interstate passengers are on. They have the ad-

vantage of riding that train.

Mr. White: I thought you said your local trains that carry passengers between all stations in Alabama furnished the same service as your interstate trains.

[fol. 1464] The Witness: I don't think you caught his

question.

Mr. White: That is the way I understood it. Maybe I misunderstood it. Do you know if you have what is called a "mixed train service"?

The Witness: At some places, yes, sir.

Mr. White: Carrying passengers in Alabama?

The Witness: Yes, sir.

Mr. White: Freight trains with a coach attached on to the tail of it?

The Witness: Yes, sir, we have that very nearly in every

State we operate in, and most other lines do too.

Mr. White: You have several bines in Alabama where that is the only passenger service that the Southern furnishes along that line, isn't it?

The Witnes: I think that is so.

Mr. White: All right.

The Witnes: I am not definite about that, I would prefer our operating witness to tell you about that.

# ByMr. Oliver:

Q. Isn't it true that your interstate passengers ride on those same trains along with the intrastate passengers in Alabama?

A. Yes, sir, and the reason for it is very simple, you might say the smallness or the size of the traffic in the territory which they serve is so little and the earnings so limited you couldn't possibly hope to get operating expenses out of them.

[fol. 1465] Mr. Oliver: That is all I have.

Examiner Stiles: You are excused.

The Witness: Thank you, sir.

(Witness excused.) -

Examiner Stiles: Gentlemen, with reference to the matter of intervention, this is a proceeding which falls within Rule 73 of the Rules of Practice. No petition need be filed, petition of intervention, if no affirmative relief is sought, if there is a full disclosure of the identity of the person or persons in whose behalf the appearance is to be entered, if the interest of such person in the proceeding, and the position intended to be taken are stated clearly, and if the contentions will be reasonably perfinent to the issues already presented, and any right to broaden them unduly is disclaimed, I will ask you—

Mr. Burkett: In other words, my appearance is as our interests may appear, which is purely and simply as the interests of these people who are organizations of a public nature, who are interested in what is involved in this case, as to the increased rates to the public, may develop.

Examiner Stiles: Well, do you appear in opposition to the petition of the carriers?

Mr. Burkett: We are appearing in support of the defendants, is that is what you mean, in other words, the Public Service Commission.

[fol. 1466] Examiner Stiles: You oppose the rate increase! Mr. Burkett: Oh, yes, sir, we did.

Examiner Stiles: If the States of Kentucky and Georgia would have their representatives state these conditions on

the record, it will not be necessary for you to file a wiftten petition.

Mr. McDonald: I am sorry, we didn't hear the conditions that you laid down. Would it be too much to ask you to

repeat them?

nower.

Examiner Stiles: If no affirmative relief is sought, if there is a full disclosure of the identify of the person or persons in whose behalf the appearance is to be entered, if the interests of such person in the proceeding and the position intended to be taken are stated clearly, and if the contentions will be reasonably pertinent to the issues already presented, and any right to broaden them unduly is disclaimed. That would require that you state of course you are seeking no affirmative relief here, and it would require that you state your attitude towards the petition of the carriers. You are opposing that petition, are you?

Mr. McDonald: We are neither opposing nor supporting. We have a like petition pending before the Georgia Public Service Commission. We are here appearing for the Georgia Public Service Commission as our interests may appear, to look and listen and learn, and we so far have not taken [fol. 1467] any position in the matter since we have not decided our own pending petition. It is necessary in Georgia that we pass on the petition. We do not have suspension

Examiner Stiles: And the State of Kentucky.

Mr. Marks: Mr. Examiner, I would like to confer further with Mr. McCarthy during the noon hour. If we file our petition it will be in accordance with the Rules of Practice.

Examiner Stiles; I was saying if you come within these conditions it will not be necessary for you to file a written petition.

Mr. Marks: That is if we are not taking an affirmative position you mean?

Examiner Stiles: If you come within the conditions which I read from Rule 73 it will not be necessary for you to file a written petition of intervention.

Mr. Marks: I see.

Mr. Burkett: Mr. Examiner, it was my idea at the start that we would have to file, under that rule, a petition of intervention, a written petition, and we so filed it with the Commission, and this is the letter 1 got back from Sec-

p. m.)

retary, Bartel, stating that we did not. My petition has been filed with the Commission, and I-think they have fifteen copies of it.

Examiner Stiles: Off the record.

(Discussion had off the record.)

[fol. 1468] Examiner Stiles: We will recess until 2 o'clock (At 12:40 o'clock, p. m., a recess was taken until 2 o'clock,

#### Afternoon Session

The hearing was resumed pursuant to recess.

2:00 P. M.

Examiner Stiles: The carriers will call their next witness.

Mr. Oliver: Mr. Examiner, before calling the next witness I would like to offer in evidence a certified copy of the order of the Alabama Public Service Commission in its Docket 8618, in which the Alabama Commission had under consideration the fares and charges which are involved in this proceeding.

Examiner Stiles: Let that be identified as Exhibit No. 4. And the Exhibit is received in evidence.

(Exhibit No. 4, by Counsel, received in evidence.)

Mr. Reynolds: I will call Mr. Stewart, please.

T. J. Stewart was sworn and testified as follows:

Direct examination.

## By Mr. Reynolds:

Q. Mr. Stewart, will you please state for the record your name, address, and occupation?

A. T. J. Stewart, General Passenger Agent, Central of Georgia Railway, Savannah, Georgia.

[fol. 1469] Q. How long have you been a General Passenger Agent?

A. Four years.

Q. Prior to that time what were you?

A. Prior to that time I was Assistant General Passenger Agent, Division Passenger Agent, District Passenger Agent, Traveling Passenger Agent, and Baggage and Claim Agent, and Secretary. Q. Will you please describe briefly the location of the lines of the Central of Georgia Railway in the State of Alabama?

A. We operate in the State of Alabama, from Phenix City to Birmingham, from Eufaula to Montgomery, from Roanoke to Opelika, and Eufaula to Ozark, Alabama.

Q. Have you an Exhibit comparing the cost to a coach passenger of traveling intrastate in Alabama with the cost to a coach passenger of traveling approximately the same distance between a point in Alabama and a point in an adjoining State?

A. I have.

Q. Will you please identify that Exhibit?

A. Exhibit No. 5.

Mr. Reynolds: May that be identified as Exhibit No. 5, Mr. Examiner?

Examiner Stiles: Let it be marked Exhibit No. 5.

(Exhibit No. 5, witness Stewart, marked for identification.)

### By Mr. Reynolds:

Q. Go ahead, Mr. Stewart, and explain that briefly. I think it is almost self-explanatory.

The Witness: It is explanatory.

[fol. 1470] Mr. Bruce: Before the witness proceeds with the explanation of the Exhibit, on the face of it, I make the same objection that we made as to Exhibit No. 2.

Examiner Stiles: Let the record show the objection. The

ruling of course is the same.

Mr. Bruce: That the Exhibit is merely a theory of what might happen. The Exhibit does not explain that it has happened, the Exhibit does not state what amount they have been deprived of, excepting in theory. It does not explain how many passengers have traveled under the so-called fares, and therefore it is immaterial and merely a theory that interstate commerce fares could be defeated by a combination of locals.

Mr. Reynolds: You have either got the wrong Exhibit or something. Have you the one marked "Exhibit No. 1"?

Mr. Bruce: No, I am making the same objection.

Mr. Reynolds: It doesn't purport to show anything about the defeat of the through published interstate fare. What it purports to show is that the cost to an intrastate passenger is less than the cost to an interstate coach passenger,

when both travel approximately the same distance.

Mr. Bruce: I am going to ask Counsel one question, and if he answers that question correctly, that is in line with the way I think he should answer it, I am going to withdraw my objection. Do you intend to use these comparisons to [fol. 1471] show that you can defeat interstate commerce fares?

Mr. Reynolds: We will have other Exhibits to show that.

Mr. Bruce: This doesn't purport to show that?

Mr. Reynolds: No.

Mr. Bruce: I withdraw my objection to this Exhibit then.

### By Mr. Reynolds:

Q. Go ahead, Mr. Stewart.

A. Take from Birmingham to Columbus, a distance of 151.4 miles—

Q. Wait a minute. Which illustration is that?

A. That is the fourth from the top.

Q. Go ahead.

A. Birmingham to Columbus, a distance of 151.4 miles, fare \$3.34. From Birmingham to Phenix City, Alabama, a distance of 149.3 miles, the coach fare is \$2.50, a differential of 84 cents between two fares with only a 2.1 difference in mileage.

Examiner Stiles: Why didn't you put the States in there after these cities?

The Witness: Well, I am sorry I didn't, Mr. Examiner. I can do that very easily during the course of the afternoon.

Mr. Bruce: That shows the interstate fare is 16 cents less than the intrastate fare, doesn't it?

The Witness: No, sir, it shows the Birmingham to Columbus fare is \$3.34.

Mr. Bruce: That is interstate, isn't it?

The Witness: That is interstate.

Examiner Stiles: In each instance, are the first two [fol. 1472] points of a group within Alabama?

The Witness: No. Birmingham to Opelika, that is intrastate, and Columbus to Sterrett is interstate:

Examiner Stiles: Yes. In each instance, the first two points on the group are points within Alabama.

The Witness: That is correct, with the exception of the seventh down there, Columbus to Union Springs, that is interstate, Columbus, Georgia, to Union Springs, Alabama, and Columbus to Montgomery.

Examiner Stiles: To Union Springs?

The Witness: Columbus to Union Springs, that is Columbus, Georgia, and Union Springs, Alabama.

# By Mr. Reynolds:

Q. Mr. Stewart, isn't it a fact that Columbus, Georgia, is the only Georgia point you used, and all of the other points on the Exhibit are in Alabama?

A. That is correct, yes.

Mr. Reynolds: I think, with that in mind, Mr. Examiner, you will understand it. Columbus and Cuthbert are the only two.

The Witness: That is right.

Mr. Reynolds: Cuthbert and Columbus are the only Georgia points; all of the other points are in Alabama.

Examiner Stiles: Thank you,

### By Mr.-Reynolds:

Q. All right, Mr. Stewart, go ahead.

A. For instance, a passenger can buy from Birmingham[fol. 1473] to Phenix City and pay the conductor a fare
from Phenix City into Columbus, Georgia, an intrastate
fare of \$2.61, which is a savings of 73 cents by buying an
intrastate ticket and rebuying.

From Birmingham to Opelika, a distance of 122.7 miles, and Columbus to Sterrett, a distance of 123.9 miles, or a difference of 1.2 miles, the coach fare, Birmingham to Opelika is \$2.05, and Columbus to Sterrett, interstate, is \$2.75, a difference of 70 cents between the intrastate and the interstate fare.

Q. Now, has the Central of Georgia Railway an interstate route between points in Alabama?

A. Yes, we have.

Q. Have you an Exhibit showing how the coach fare via your interstate route compares with the coach fare between the same points via an intrastate route?

A. I haves

Q. What Exhibit is that?

A. My Exhibit No. 2.

Mr. Reynolds: May that be marked for identification as Exhibit No. 6, Mr. Examiner.

Examiner Stiles: Let it be so marked.

(Exhibit No. 6, witness Stewart, marked for identification.)

By Mr. Reynolds:

Q. Will you please proceed to explain that Exhibit?

A. Opelika, Alabama, to Troy, Alabama, a passenger [fol. 1474] that travels via the Central of Georgia Railway would naturally have to go interstate via the Central of Georgia Railway 113.2 miles, with a coach fare of 2.53. An intrastate passenger in Alabama, going between the same two points, a distance of 117.4 miles, 4.2 miles different, the coach fare is \$1.95, with a saving of 58 cents.

Q. In that instance your interstate route is the shorter of the two routes?

A. That is correct.

Q. And yet the passenger pays more money via the interstate route?

A. That is right.

Q. What is your next Exhibit?

A. It is practically the same, Mr. Reynolds, as my Exhibit No. 2.

Mr. Oliver: Referred to as Exhibit No. 6.

By Mr. Reynolds:

Q. Exhibit No. 2, introduced by the witness Aiken?

A. No, my Exhibit No. 2, the Examiner's Exhibit No. 6 I think it is.

Mr. Reynolds: May that be marked for identification as Exhibit No. 7?

Examiner Stiles: Let it be so marked.

(Exhibit No. 7, witness Stewart, marked for identification.)

By Mr. Reynolds:

Q. Explain Exhibit No. 7 please, Mr. Stewart.

[fol. 1475] A. From Birmingham to Invernness by the Central of Georgia interstate is 215.1 miles, and the coach fare is \$4.77. Birmingham to Invernness via the L&N. Montgomery, ACL, Troy, Central of Georgia, a distance of

170.2 miles, the coach fare is \$2.94, a difference in fare of \$1.83.

Birmingham to Fort Mitchell, which is a Government reservation where we have a lot of troop movements out of Fort Mitchell, Alabama, via the Central of Georgia interstate is \$161.5 miles, and the fare is \$3.60. Via the Central of Georgia, Montgomery, L&N, the fare is \$3.14, a difference of 21.7 in miles, and a difference of 46 cents in the interstate fare.

- Q. That is another instance where your interstate route is shorter than the intrastate route, and yet the coach fare over your interstate route is more?
  - A. Is more.
  - Q. That is higher?
  - A. Yes, sir.
  - Q. Higher than the fare via the intrastate route?
  - A. That is right, yes, sir.
  - Q. Are those all of the Exhibits you have?
  - A. That is all I have.
- Q. Does the Central of Georgia Railway make any special effort to accommodate intrastate passengers traveling between points in Alabama, and, if so, please explain what they are.

[fol. 1476] A. We certainly do, Mr. Reynolds. We have the Seminole Limited, running as an interstate train from Chicago to Jacksonville, Florida. There is not possibly a day at these present times that we do not southbound put on one or two extra coaches in Birmingham for the passengers boarding the train at Birmingham. Trains 1 and 2 are local trains between Birmingham and Macon, Georgia, and there is not a day that we do not operate extra coaches on that train from Birmingham to Columbus, where two coaches are cut off that train every day, and put on train No. 1 going back into Birmingham that afternoon, leaving Columbus at 4:05 P. M.

And there are times when those two coaches go out of Columbus, Georgia, practically empty, but are loaded after they get across the river at points between Phenix City and Birmingham by intrastate passengers.

Q. Do I understand now correctly that the two trains that you referred to operate over your line between Birmingham and Columbus, Georgia!

A. That is correct.

Q. And you put on extra coaches at Birmingham and at Columbus?

A. That is correct.

Q. To handle Alabama intrastate passengers?

A. That is correct. These cars do not go off our line. They are what you might say shuttle cars between Columbus and Birmingham, Alabama.

[fol. 1477] Q. Are those cars air conditioned?

A. They are air conditioned, yes, sir.

Q. When did you get to Montgomery, Mr. Stewart?

A. I came in here Saturday afternoon.

Q. How did you come?

A. West Point 31.

Q. How did you come?

A. By Opelika.

Q. Did you travel on West Point 31 from Opelika to Montgomery?

A. That is correct.

Q. Did you travel in the day coach?

A. I did.

Q. Were passengers standing up in the day coach?

A. They were not.

Q. You had a seat, did you?

A. I had two.

Q. And there was plenty of room for other people to sit down?

A. They could have put 50 more people on there.

Examiner Stiles: Let's see if I understand your Exhibit No. 7. As I read that over, this first route that you show via the Central of Georgia, you would leave Birmingham at 4:50 p. m., let us say on Monday.

The Witness: That is right.

Examiner Stiles: And you would arrive at Invernness at 8:50 next morning?

[fol. 1478] The Witness: That is correct.

Examiner Stiles: And the fare is \$4.77?

The Witness: That is right.

Examiner Stiles: Now, taking the other route, you would leave Birmingham at 8:35 at night?

The Witness: That is right. Examiner Stiles: On Monday? The Witness: That is right.

Examiner Stiles: And you would get to Invernness at 5:40 the next night?

The Witness: That is right.

Examiner Stiles: In other words, nearly a day in travel?

The Witness: That is right.

Examiner Stiles: For that, the fare is \$2.94?

The Witness: That is right.

Examiner Stiles: You would not say the service was comparable?

The Witness: No.

Examiner Stiles: You would not say the value of the service was comparable, would you?

The Witness: That is right, I would not say it is.

Mr. White: And in taking passage over the L&N and ACL to Troy, and Central of Georgia between Birmingham and Invernness, you would make two changes, would you not?

The Witness: From Birmingham to Invernness, you [fol. 1479] would make a change, Mr. White, at Montgomery and at Troy, that is correct.

Mr. Bruce: It would be a three-line haul, would it not? The Witness: Take that Fort Mitchell example down there, next, Birmingham to Fort Mitchell, if we should be called upon to handle passengers between those points there, which we don't know when we will be called upon to move them out of there, nor to what points they are going to move, but that of course would be a special train service, and naturally the route would be followed, being the short line route between Fort Mitchell and Birmingham.

#### By Mr. Reynolds:

Q. Now, do both interstate and intrastate passengers ride on all of the trains that the Central of Georgia operates between points in Alabama?

A. Interstate trains, yes. We have some intrastate trains

in Alabama.

Q. And on those intrastate trains do both interstate and intrastate passengers ride?

A. They do.

Q. In coaches?

A. They do.

Q. Now, when you refer to intrastate trains, do you mean a train that starts in Alabama and stops in Alabama? [fol. 1480] A. That is what I mean.

Q. Now, you have had a good deal of experience in passenger traffic matters. Do you know of any reason why the

coach fares in Alabama should be less than the coach fares between points in Alabama and points in adjoining States?

A. I do not. I cannot understand why a fellow living over across the river in Columbus, Georgia, has got to pay 84 cents because he lives across the river, more than he has if he lived at Phenix City, a distance of 2.1 miles, why he should pay 84 cents for that.

Mr. Reynolds: Mr. Examiner, I ask that Exhibits 5 to 7, inclusive, be received in evidence, please.

Examiner Stiles: Exhibits 5 to 7 inclusive are received in evidence.

(Exhibits Nos. 5 to 7, inclusive, witness Stewart, received in evidence.)

Examiner Stiles: Is that all on direct?

Mr. Reynolds: Yes, that is all,

Examiner Stiles: You may cross examine.

#### Cross examination.

# By Mr. Bruce:

Q. Mr. Stewart, have you ever had any complaint from a passenger living in Columbus, Georgia, with reference to the rate or the fare rather from Birmingham to Opelika?

A. I have not personally, but our—

[fol. 1481] Q. I want to know if you have.

A. I said no.

Q. Well, all right, say that.

A. I did say that, sir.

Q. Have you ever had any complaint from a passenger living in Columbus about the fares between Birmingham and Sylacauga?

A. No, sir.

Q. Would that apply to every point you show on your Exhibit No. 5?

A. So far as I am personally concerned, it does, yes.

Q. Now, with reference to your Exhibit No. 6, does the same thing apply to that?

A. So far as I am personally concerned, I have not had anything personally, no.

Q. On the first example that you make from Birmingham to Invernness, that is an interstate movement, is it not?

A. By our railroad it is; by the L&N to Montgomery, ACL to Troy, and Central of Georgia beyond it is not, it would be an intrastate movement.

Q. Troy is on a branch line of the Central of Georgia, is

it not?

A. Well, you might call it a branch line. It is on our line from Columbus-to Andalusia.

Q. Would you call it a main line?

A. No, we don't call it a main line.

[fol. 1482] Q. What class of equipment do you operate between Troy and Columbus!

A. Steel coaches.

Q. What?

A. Steel coaches, non-air conditioned.

Q. Non-air conditioned?

A. Yes.

Q. And that would be intrastate commerce?

A. I beg your pardon.

Q. Did you say that would be intrastate commerce?

A. That is interstate from Birmingham to Invernness by the Central of Georgia Railway all the way.

Q. To travel over that route you would have to come from Birmingham to—

A. Columbus, Georgia.

Q. And then he would have another change. Name that change.

A. Columbus, Georgia.

Q. Do you have very many people that travel over that route?

A. I don't know of any number of people that travel over the route, no.

Q. Your schedule would be what, what time would you leave Birmingham using that route?

A. 4:50 in the afternoon.

Q. And you would get into the destination there, at Invernness, at 8:50 next morning?

[fol. 1483] A. That is right.

Q. Do you know of any better route than that to use, where the time consumed would be much less?

A. To get to those two points, if you are going over from Birmingham and want to use our train, or a train, you have to use either that service or this service, to get there. There is not very much difference in either one of the services.

Q. Birmingham to Fort Mitchell, would the same apply?

A. Birmingham to Fort Mitchell is a little different. Like I say, that is a Government reservation, and paratroops are quartered at Fort Mitchell, and special train movements go out of Fort Mitchell.

Q. That would be a local movement over your line also,

would it not?

A. That would be local so far as the Central of Georgia is concerned from Fort Mitchell to Birmingham, yes, sir.

Q. What kind of equipment do you use on that train?

A. At Columbus we use air conditioned—

Q. Columbus?

A. Columbus to Birmingham is air conditioned. From Fort Mitchell to Columbus is non-air conditioned, but steel cars.

Q. You have one train a day?

A. One train going down and one back a day.

Q. The so-called local trains you referred to, and that your Counsel asked you about in intrastate commerce in [fol. 1484] Alabama, where do they run from?

A. Train No. 1 leaves Macon, Georgia, and goes to Bir-

mingham.

Q. Macon, Georgia?

A. Macon, Georgia.

Q. That is not an intrastate movement?

A. You mean intrastate trains?

Q. Yes.

A. We have one from Eufaula to Ozark, and one from Roanoke to Opelika.

Q. The one from Eufaula to Ozark, what kind of train is that?

A. A mixed train.

Q. A freight train with a passenger car on it?

A. That is correct.

Q. Does it have a regular schedule?

A. Tri-weekly, yes.

Q. Do you maintain that schedule?

A. We do.

Q. That is you leave on time, but do you always arrive at the destination or terminal?

A. When you say "maintain schedule," we figure that the schedule is maintained more than it is lost down on that line down there.

Q. In other words, it is just a passenger car that you have on the freight train, that whenever your freight train gets to the destination, the passenger gets there, is that right?

[fol. 1485] A. That's right, he couldn't get there before.

Q. Does the same apply with reference to your other local train, is that a mixed train also?

A. Yes, mixed service.

Q. And you have what class of equipment on that train?

A: We have a steel coach.

Q. Air conditioned?

A. No. sir.

Q. Revolving seats?

A. No, sir.

Q. Do you have a maid on that train?

A. No, sir. Have you been over there?

Q. Or hostess?

A: I think that is irrelevant to the question, Mr. Chairman. On a mixed train you never heard of a maid or hostess, on a mixed freight train.

Q. Do you charge the same price on that, that is the same fare on that train as you do on the Seminole?

A. We do.

Q. Do you have a hostess on the Seminole?

A. We do not:

Q. And what have you got on the Seminole in the line of

extra protection for the passenger?

A. Air conditioned reclining seat cars, and high back seat cars, standard pullman sleeping cars, and observation cars. [fol. 1486] Q. Between what points in Alabama does the Seminole operate?

A. Phoenix City and Birmingham:

Q. How many stops do you have on that line?

A. You have it in your record. We gave it to you. you want me to read them off?

Q. Yes, sure.

A. Flags at-

Q. Flag, is it?

A. Flag at Smith's.

Q. What does a flag mean, what do you stop there for, what kind of passenger?

A. Flag means if you buy a ticket the agent can flag a train that stops there.

Q. To any destination?

A. Yes, sir, if he has a ticket to sell.

Q. What other stops do you have?

A. Flag at Bleecker, flag at Salem, stop at Opelika, stop at Gold Ridge, stop at Waverly, stop at Camp Hill, stop at North Dadeville, flag at Jackson's Gap, stop at Alexander City, flag at Kellyton, stop at Goodwater, flag at Hollins, stop at Sylacauga, stop at Childersburg, stop at Vincent, flag at Sterrett, flag at Vandiver, stop at Leeds, stop at Birmingham.

Q. On this flag at Salem, would you stop to pick up a

passenger going to Waverly?

A. Yes, sir.

[fol. 1487] Q. Are the cars on the Seminole reserved, do they have assigned seats?

A. They do not.

Q. Do you sell them on reservation?

A. No, sir, they do not.

Q. How many miles does that train operate in the State of Alabama?

A. 149.1.

Q. In other words, it is a very small portion of your system in Alabama, is that right?

A. Yes, I would say that.

Q. The Central of Georgia Railroad is a railroad that comes into Alabama with a series of branches or terminals, isn't that right? In other words, you have a terminal at Montgomery, you have a terminal at Birmingham, and you have one at Andalusia, one at Ozark, one at—

A. Roanoke.

Q. At what?

A. Roanoke?

A. Yes.

Q. You connect with other lines from these points, is that right, or do you have connections out of these points?

A. Yes, we have connections.

Q. So you really have very little mileage in the State of

: [fol. 1488] Alabama, do you not?

A. Yes, we have quite a good deal of mileage in the State of Alabama. We run from Eufaula into Montgomery with air conditioned trains from Smithville, Georgia.

Mr. Reynolds: How far is that?

The Witness: Smithville, I don't recall now, but about 56 miles I think, something like that.

## By Mr. Bruce:

Q. 66 miles?

A. 56, I think.

Q. And that would be

A. I have forgotten the distance.

Q. And that would be enroute to what point, first point in interstate commerce?

A. Eufaula is the first point. Next would be Lugo, Batesville, Comer, Midway, Three Notch, Union Springs, Thompson, Fitzpatrick, Mitchell, Pike Road, Perry's Mill, Barachias, and Montgomery.

Q. What is the mileage of that?

A. I have forgotten the mileage on that, I haven't got it with me. Give me the guide and I will tell you. It is a little less than 80 miles.

Q. A little less than 80 miles?

A. I would say 80 miles.

Mr. Refnolds: What branch is that, Mr. Stewart?
The Witness: That is from Smithville to Montgomery.

#### [fol. 1489] By Mr. Bruce:

Q. If you were traveling from Birmingham to Troy, you would use the route that you have stated; that is necessary if you were a passenger?

A. If I had to get to Troy I would use one of those routes

that I put down there, yes, if I was going by train.

Q. If you had available other routes-A. If I was going by train I would.

Q. -you would not?

A. If I had to get Troy by train I would, yes, go either one or the other of those routes.

Mr. Bruce: That is all.

Mr. Reynolds: Just a second. I have one or two questions on redirect examination.

Redirect examination.

## By Mr. Reynolds:

Q. These mixed trains that you referred to, do they handle both interstate and intrastate passengers?

A. They do.

14-574

Q. And the interstate passenger pays the 2.2 cents a mile?

A. That is correct.

Q. Now, the Seminole going northbound, when it gets to Birmingham, do you deliver it to any connecting railroad there?

A. We deliver it to the Illinois Central Railroad.

Q. And it goes on through to Chicago?

A. That is correct.

[fol. 1490] Q. Do you know whether or not on account of the lower intrastate coach fares in Alabama, passengers actually defeat the through published interstate fares by buying at the intrastate rate tickets for the portion of their journey between points in Alabama?

Mr. Bruce: I object to the question. It is a matter of otheory unless he had his witness name the passengers, his residence, where he has traveled to and from.

Mr. Reynolds: I asked him if he knew.

The Witness: Not personally, but the condition exists, and it is there, and we do know it is being done.

Mr. Reynolds: That is all.,

#### Recross-examination.

## By Mr. Bruce:

Q. I have a question now. Do you know of any particular instance where that has been done, Mr. Stewart?

A. Nô.

Q. Has any one reported to you that it has been done, any one that is working for the Central of Georgia?

A. No.

Q. So that you are staring that it can be done, just the same as some one can commit burglary?

A. Living in Columbus, Georgia, would you ride across the river to save 84 cents if you needed 84 cents? I would.

Q. But you don't know of any one that did that?

A. No, sir. As it stands, from a common sense stand-[fol. 1491] point, they are going to do it if they know about it.

Mr. Reynolds: The taxi fare is less than 84 cents, isn't it? The Witness: Absolutely.

Examiner Stiles: Is there anything further?

Mr. Reynolds: That is all I have.

Mr. Bruce: No, sir.

Examiner Stiles: You are excused.

(Witness excused.)

Mr. Reynolds: I will call Mr. Makinson.

## J. D. Makinson was sworn and testified as follows:

Direct examination.

#### By Mr. Reynolds:

- Q. Have you any Exhibits, Mr. Makinson?
- A. I have one, Mr. Reynolds.
- Q. Has that been distributed?
- A. No.
- Q. Will you please do so?
- A. Yes.
- Q. Please state your name?
- A. J. D. Makinson, General Passenger Agent, Seaboard Air Line Railway, Norfolk, Virginia.
- Q. Outline briefly your experience in the Traffic Department?
- A. I have been with the Traffic Department, Passenger Traffic Department of the Seaboard for over 25 years, [fol. 1492] formerly Assistant General Passenger Agent, Chief Clerk, Chief Rate Clerk. I also handled train service in the general office.
- Q. Describe the location of the lines of the Seaboard Air Line Railway in Alabama?
- A. The Seaboard has two lines, one extending east from Birmingham towards Atlanta, 93.5 miles in the State of Alabama, and another line extending from Montgomery eastward towards Savannah, Georgia, 73.9 miles in Alabama. We have a total of 167.4 miles of passenger mileage in Alabama.
- Q. Have you an Exhibit showing examples of how interstate coach passengers traveling to or from points in Alabama can defeat the through published interstate coach fares by purchasing tickets at the fare of 1.65 cents per mile for the portion of their journey within Alabama?
- A. I have. And before I present this statement I would like to mention that the matter of defeating the through

published fares was one of the items on a docket of our passenger representatives staff at a meeting last spring, and the reports of our ticket agents and representatives at that meeting indicated that this combination was being done, combining of fares was being done by the passenger himself. We had told them time and again that it was not permissible to knowingly connive with the passenger.

Q. You had told your agents?

A. We had told various representatives by word of mouth [fol. 1493] to tell the agents that it was not proper, but it did not have the desired effect. We knew it was still being done because of my own observation of refund claims and baggage claims, which clearly indicated that it was being done. People would send tickets in for redemption, and I made a sort of a check of it once in a while in the office.

We felt so strongly about it that on March 9, 1943, we issued a mimeographed letter to our principal tickets agents, again reminding them of the fact that it was not lawful nor permissible to assist the passenger in defeating

the through fares.

I have this three page statement that I would like to offer.

Mr. Reynolds: May that be marked for identification as Exhibit No. 8?

Examiner Stiles: Let it be so marked.

(Exhibit No. 8, witness Makinson, marked for identification.)

# By Mr. Reynolds:

Q. Please explain that briefly.

A. Sheet one shows the manner in which it is possible for the lower basis of fares intrastate in Alabama to be used by the passenger to defeat the through passage, I mean through published interstate fare. A passenger starting at Borden Springs, Alabama, going to Memphis, Tennessee, his through interstate fare at 2.2 cents per nile over the Seaboard to Birmingham and the Frisco Lines is \$7.63. [fol. 1494] The passenger can buy from Borden Springs to Birmingham at the intrastate coach fare of \$1.55.

Q. \$1.65?

A. \$1.55 and get off,—he has to get off anyhow—and buy another ticket from Birmingham to Memphis for \$5.61, representing a saving of 47 cents that the passenger can make, if he desires.

Sheet No. 2 shows the coach fares between two points in Alabama, one over an intrastate route and one over an interstate route between Piedmont, Alabama, and Hurtsboro, Alabama. Via the interstate route through Atlanta, Georgia, the passenger now pays \$5.21. Over the intrastate route through Birmingham he would pay \$4.05, a difference of \$1.16, and only one mile difference in the distance.

Sheet No. 3 indicates how two passengers leaving Birmingham, Alabama, on the same tr-in, occupying seats maybe beside each other, will pay different rates per mile for that portion of the trip within the State of Alabama. The interstate passenger from Birmingham to Cedartown,

Georgia, pays an interstate fare of \$2.35.

A passenger on the same train from Birmingham to Borden Springs, Alabama, pays \$1.55. The interstate passenger pays \$2.02 for that portion of his journey between Birmingham and Borden Springs, Alabama, while the intrastate passenger pays \$1.55 for the same distance, a dif-[fol. 1495] ference of 47 cents in favor of the intrastate passenger.

Q. Borden Springs is intermediate to Cedartown, isn't it?

A. It is.

Q. Via your route from Birmingham to Cedartown?

A. That is correct.

Q. On the trains that you operate, that the Seaboard Air Line operates in Alabama, do you furnish the interstate and the intrastate passenger with the same services and conveniences?

A. Yes, we do. We have out of Montgomery eastward one train daily in each direction, gas-electric operated, all steel equipment, coaches only, but it is not air conditioned. The territory is rather sparsely settled, and it would not support a greater service!

Q. Does that train handle both interstate and intrastate

passengers?

A. It operates between Montgomery and Americus, Georgia, and handles both interstate and intrastate passengers.

The Scaboard has no passenger service in Alabama consisting of mixed service. It is all straight passenger trains.

Now, eastward from Birmingh in we run two trains in each direction daily. These trains carry through coach and pullman equipment, and dining cars, through Atlanta to Washington, D. C. All of the regular assigned equipment

is air conditioned, with individual seats. These two trains together stop at points in the State of Alabama, an average [fol. 1496] of 8 miles apart, in other words, the distance is 93½ miles in Alabama, and there are twelve stops east of Birmingham before you hit the State line. Identical equipment is furnished on both trains, for both interstate and intrastate passengers.

Q. Have you made any investigation to determine whether or not a passenger traveling on your trains into

and out of Birmingham has to stand up?

A. Well, I made a study of the trains leaving Birmingham. For the month of April these two trains each had an average daily seating capacity for coaches of 182 the average load leaving Birmingham on one train in coaches of 122, and on the other train 154. Now, there were certain days in there that the capacity was exceeded, and some passengers had to stand up, but on the average we had more than sufficient seating capacity, and that is what we have to go by. We cannot cover the flood, any more than the Alabama River can be kept within its banks all the time.

\*Q. The instances in which passengers have to stand, were

they many or few?

A. The P&B car, which is club cars, also air conditioned, has a capacity of 50 passengers. The club car on train No. 6 leaves in the morning, and exceeded capacity only one day. No. 6, the morning train has, with white passengers, exceeded the capacity on four days in April.

Q. Four out of thirty?

[fol. 1497] A. Four out of thirty. Train No. 10 is a little heavier patronized train. The club car was exceeded on the noon train six times, the white coaches, two of them, the capacity was exceeded eight times.

Q. Now, those persons who stood up, they may have been

interstate or intrastate passengers?

A. I made no separation. That was leaving Birming-ham, from actual conductors reports. I might state that when that condition exists, and there is room in the pullman car on that train; it is our practice and instructions to seat the passengers in the pullman cars, until seats in the coaches become available, but not to the exclusion of pullman passengers.

Q. Do I understand then that you do not know whether passengers actually stood on any of the days you mentioned, you just stating that there were more coach pas-

sengers than you had seats in the coaches for, is that right?

A. I know there were some days that they stood, there is no doubt about that.

Q. Now, Mr. Makinson, has the Seaboard Air Line Rail-

way improved its equipment any in recent years?

A. Going back to this other thing a minute, if we knew ahead of time when furloughed soldiers were going home, if the Army could tell us, we could arrange our extra equipment in a better manner, but very often we will have 50 or a hundred or two hundred or six hundred furloughed [fol. 1498] boys come to us with no prior notice. That is one of our difficulties.

Q. All right.

- A. As to the improved service, the Seaboard had in effect an improved coach program at the beginning of the war, which more or less stopped it. Up to that time, however, we had air conditioned ownership cars on the Seaboard, 92 air conditioned coaches, including colored and white coaches, out of a total coach ownership at the present time of 168. Of these air conditioned coaches we have assigned I think a fair share for our service to and from Birmingham, in other words, for the State of Alabama. I think in proportion to our mileage that we are giving the State of Alabama as good as we have on the balance of the system.
  - Q. Does your line handle military traffic?
  - A. We handle a large amount of military traffic.
- Q. Will you just state briefly some of the unusual circumstances encountered in the handling of military traf-
- A. All of the military revenue is not net by any means. I have occasion to look over every morning when I am home the military train reports which are put on my desk. Extra sections are operated sometimes for two, three, four, and five cars. An engine has a capacity of so many cars to make its schedule. When we run over that, we have to split the train in sections. During the month of April, 1943, the Seaboard handled 464 extra trains. That included special military trains and extra sections of regular [fol. 1499] trains operated for military movements. In May we handled—

Examiner Stiles: Are you telling now about interstate? The Witness: Over the whole system.

# By Mr. Reynolds:

Q. This is the whole system, Mr. Makinson?

A. I am just using this because I don't want to leave the impression that all of the military money is clear profit.

Mr. Bruce: May I ask a question right there, Mr. Counsel?

Mr. Reynolds: Yes, sir.

Mr. Bruce: Do you handle any military trains in intrastate commerce in Alabama?

The Witness: The location of the camps-

Mr. Bruce: I am asking you if you do.

The Witness: —does not cause us to handle any military trains wholly within the State of Alabama.

Mr. Bruce: Then I object to the examination.

Mr. Reynolds: The purpose of the question is to show to the Commission the unusual expenses in connection with the handling of military movements of traffic. While the movement on this particular railroad may not be intrastate, I think it is pertinent to show the conditions surrounding military traffic.

Mr. Bruce: Counsel is bringing in a disability or added cost that hasn't anything whatsoever to do with the military movement. There is no military movements between [fol. 1500] points in Alabama. You are placing a burden there on interstate commerce.

Examiner Stiles: Do you have a military movement in interstate commerce through Alabama, into or out of Alabama?

The Witness: Yes, sir, very much of it.

Examiner Stiles: The objection is overruled.

The Witness: One of our expensive operations, in getting down to points, is our connection from the Frisco at Birmingham. There are many times that we have to operate an extra section from Birmingham to Atlanta or east with three, four or five cars. Of course, no money can be made on such a small train, but the military necessity demands it, and we accommodate the Army to the extent of our ability.

#### By Mr. Reynolds:

Q. Let me ask you this, does the movement of military traffic involve a large portion of empty car miles?

A. The assembling of equipment for military movements and even the operation of special deadhead equipment trains many miles is an added cost, a very heavy cost in many cases. We at one time handled a lot of extra equipment on freight trains to get it in position. But the military authorities were not satisfied with that, and at their request and for other reasons we have stopped handling extra equipment on freight trains now. We have to handle it on extra passenger trains. If we don't have room, we have to run special deadhead equipment trains

Q. Is it fair to say that in the movement of bodies of troops it is necessary for you to have some more equipment [fol. 1501] than you own yourselves, and you have to get

that equipment from your connections?

A. Far more. The Seaboard has a lot of camps on its railroad, and we have not near enough equipment of our own ownership to take care of all of the military movements from the camps on the Seaboard.

Q. When you do have to get the equipment from your connections, is it necessary in most instances to move that equipment empty to the point at which the military is go-

ing to entrain?

A. I wouldn't say most cases, I would say in a large proportion. I wouldn't say even in 50 per cent of the cases, but close to it, because the coordination between the Army and the railroads now eliminates it to the extent possible, the useless deadheading of equipment. They try to coordinate the movements, but there is a large percentage, less than 50 I would say, of deadhead movements.

Q. Do you have to have special representatives on troop

trains?

A. Yes, sir, at the direct request, and I might say almost demand of the Army, we put a special escort on each troop train. He may be a passenger representative or a freight representative, but he has to be on there.

Q. Do you think of any other matter at this time which is an item of added expense in handling military traffic?

A. No, sir, that is all I have to offer,

Mr. Reynolds: I will ask, Mr. Examiner, that Exhibit

[fel-1502] No. 8 be received in evidence.

Mr. Bruce: I have an objection to offer. I offer the objection this Exhibit is a theory, it is an explanation that is unlawful, that the witness has not in any way indicated

that there has been any movement, except that there were rumors that there are movemnts.

He has not named any person who has complained about these conditions, nor has he named anybody who has traveled under that condition. I would like to have my objection noted, Mr. Examiner.

Examiner Stiles: The objection is noted and the objection is overruled. Exhibit No. 8 is received in evidence.

(Exhibit No. 8, witness Markinson, received in evidence.)

Examiner Stiles: Is that all?

Mr. Reynolds: That is all on direct.

Examiner Stiles: You may cross examine.

Cross-examination.

#### By Mr. Bruce:

Q. Now, let's talk about how much mileage you have between the Alabama-Georgia line and Birmingham on the Seaboard. How many miles do you operate in Alabama on that line?

A. Didn't I\give that mileage at the beginning.

Q. Approximately? Can you tell me approximately?

Mr. Reynolds: You did give it.

[fol. 1503] Mr. Bruce: I will lend you a guide.

The Witness: I have the mileage. I stated it at the beginning.

Mr. Reynolds: All right, state it again.

The Witness: 93.5 from Birmingham to Palestine, Alabama, 73.9 from Montgomery to Pittsview, Alabama. We don't show the exact mileage to the State line, but I can furnish it to the Commission later if it is desired. That is to the last station before you hit the State line, a toal of 167.4 miles, a small but very important part of the Seaboard.

## By Mr. Bruce:

Q. Now, on your Exhibit No. 8, page 1 thereof, the first example you show between Borden Springs, Alabama, and Memphis, Tennessee, is that a going route, do passengers use that route between Birmingham and Borden Springs?

A. Yes, sir. Up until a few months ago there was through pullman service over that route, cars running from

Washington to Memphis. Due to the exigencies of the war, the line has been shortened to Birmingham, but still makes connection, and it is a very important connection of the Seaboard.

Q. That connection does not operate over the Seaboard,

does it?

A. I don't understand that question.

Q. Is it on the Seaboard System, it that a connecting line movement?

A. The Seaboard from Borden Springs to Birmingham?

Q. Yes

[fol. 1504] A. Frisco lines from Birmingham to Memphis. Under this example the Seaboard would be the one deprived of the 47 cents revenue.

Q. Is this a map of your system (indicating)?

A. That is not a correct map, this what we call a "diagram map".

Q. Is that map in your time table?

A. It is in our advertising folder, and also in the Official Railway Guild on a smaller scale.

Q. In your operation between Birmingham and Cedartown, that is an interstate movement, is it not?

A. That is correct.

Q. And the coach fare in interstate commerce is 2.2 cents?

A. That is right, 2.2 cents per mile, with fractions added.

Q. Now, on a first class passenger movement from Cedartown to some point in Georgia, what is the present fare?

A. First class?

'Q. First class.

A. It is approximately 2 cents per mile.

Q. 2 cents?

A. That is right.

Q. Is it 2.2 cents?

A. Wait a minute. That is Georgia you are talking about? Yes, they have got the 10 per cent increase on it, and it is 2.2.

[fol. 1505] Q. Let's take a passenger traveling on the same train from Alabama to a point in Georgia. What would be the first class fare for that passenger?

A. From a point in Alabama to a point in Georgia, first

class would be 3.3 cents per mile one-way.

Q. In other words, the interstate fare for an equal distance from Alabama to Georgia is 3.3 cents per mile, isn't that right?

A. For an equal distance?

Q. Yes. Let's say for 100 miles from a point in Alabama, 100 miles into Georgia, isn't the fare 3.3 at the present time, first class?

A. Approximately \$3.30.

Q. For 100 miles in Georgia, the fare is 2.2 cents, isn't that right?

A. Approximately \$2.20.

Q. Is that class of passenger travel on the same train, both coaches and—we will say a man did not have a pullman seat in the pullman; could be travel in the same car?

. On the Seaboard he would, yes, sir.

- Q. And you call that discrimination against interstate commerce?
- A. Do you mean as to the Georgia part of it, or the Alabama part of it?
- Q. Yes. You made various examples in Alabama on coach fare.

Mr. Reynolds: We say the Georgia first class fare should [fol. 1506] be 3.3, yes.

The Witness: We have an application before them now, not on the first class, but on the coach.

#### By Mr. Bruce:

Q. Are you familiar with the fact that the Interstate Commerce Commission has approved the 2.2 cents fare between points in Georgia under a Section 13 investigation?

A. Not the 2.2, no, sir.

Q. You don't know that they did that?

A. Not the 2.2.

Q. Have you ever had any passenger or anybody living on the Seaboard make a complaint to you about the fares in Alabama being lower than they are in interstate commerce?

A. No, sir, I have had no complaints.

- Q. Has anybody ever complained to you about prejudice existing against interstate commerce, preference being given to intrastate commerce in Alabama?
- A. Not in Alabama, I have not had any direct ones from Alabama, but I have in other states, where we have a

greater interest, and the accom-odations are more—are easier for the passengers to avail themselves of, and amount to more in dollars and cents.

Q. Do you have any knowledge of any person whose name you can give me, who has defeated the interstate rates, interstate fares by the use of combination of an interstate fare and an intrastate fare!

[fol. 1507] A. In my first statement I said that had come to my personal attention, that it was being done on baggage, on account of my handling baggage and refund claims in past years. I didn't make a record of the names nor addresses of the passengers.

Q. Could you grant a refund based upon that kind of a ticket?

A. Well, I'll tell you one of them, so you will get the idea. We had a refund, I mean a baggage claim in connection with a man who checked his baggage through to a point beyond Boston, I don't remember whether it was B & M or B & A, but anyway to Boston and a commutation form of coupon beyond. Our agent at Miami did not have any commutation tickets, he didn't know what they were, he didn't know any difference, as to whether it was good for baggage or not, so he checked the baggage through.

That is how that particular one came to my attention that passengers were defeating the through fares. There were others, the circumstances of which I don't recall as vividly as that one at the time, but there have been, through the years, whenever this condition has developed, you get it coming through your office.

Q. You say "through the years"?

A. That is right.

Q These fares are-

A. I mean through those cases of this kind. This is not the first time we have had different fares intrastate, nor the [fol. 1508] first time we have had Thirteenth Section petitions.

Q. We are talking about this case at the present time. When did the rates go into effect in interstate, I mean on the increased basis of 2.2 cents?

A. As I recall, it was October 1, 1942.

Q. When would the suspended tariffs have become effective?

A. For Alabama fares?

Q. Yes.

A. On the same date, as I recall it.

Mr. Oliver: December 1.

The Witness: December 19 I don't recall the exact dates.

#### By Mr. Bruce:

Q. These examples which you have given me, are they since October 1, 1942, or prior to that time?

A. These statements of the manner in which the passengers might deafeat the through fare, sheet 1, for instance, is based on the fares that the passengers are paying today.

Q. I am talking about this baggage check refund, the so-called movement on your commutation ticket, when did that occur?

A. Several years ago.

Mr. Bruce: Well, then, it has nothing whatsoever to do with this case, Mr. Examiner. The interstate fares went into effect on October 1, so he states, That is all I have.

Examiner Stiles: Is there any redirect?

Mr. Reynolds: No redirect.

Examiner Stiles: You are excused.

## [fol. 1509] (Witness excused).

Mr. Burger: Could I enter an appearance? William C. Burger, for the Louisville & Nashville Railroad Company. Examiner Stiles: Mr. Oliver entered your appearance for you.

# T. K. Lynch was sworn and testified as follows:

Direct examination.

#### By Mr. Reynolds:

Q. Will you please state for the record your name, address, and occupation?

A. T. K. Lynch, Wilmington, North Carolina, Assistant General Passenger Agent, Atlantic Coast Line Railroad.

Q. Have you prepared some Exhibits to be introduced in evidence in this case?

A. I have.

Q. What is the first Exhibit that you desire to introduce?

A. have an Exhibit here—

Q. Identify it please.

A. It is a statement which shows the manner in which the lower basis of fares intrastate in Alabama makes it possible for passengers to defeat the through published interstate fares.

Mr. Reynold: May it be marked for identification Exhibit

Examiner Stiles: The Reporter will so mark it.

(Exhibit No. 9, witness Lynch, marked for identification.)

[fol. 1510] Mr. Bruce: I offer the same objection. May it be noted, Mr. Examiner?

Examiner Stiles: Yes, sir.

By Mr. Reynolds:

Q. Do you want to say anything about your Exhibit, Mr. Lynch?

A. Yes, sir. I will just deal with two of these instances. Take the second one there. It shows that a passenger from Bainbridge, Georgia, to Birmingham, Alabama, moving via the ACL to Montgomery, and the L&N beyond, the one-way interstate coach fare is \$6.02.

By buying a ticket from Bainbridge to Dothan, and there re-buying to Birmingham an intrastate ticket he may travel

for \$4.90, at a saving of \$1.12.

Now, the last one, Thomasville, Georgia, to New Orleans, Louisiana, via ACL to Montgomery and L&N beyond. The one-way interstate coach fare is \$11.55. If a passenger should buy a ticket from Thomasville to Montgomery and there re-buy a ticket from Montgomery to Mobile, and there re-buy a ticket from Mobile to New Orleans, he can make the trip for \$10.69, at a saving of 86 cents.

Q. Thomasville and Bainbridge are both important

points on your line, aren't they!

A. I would say they are, on our line into Montgomery, sir, particularly Thomasville.

Examiner Stiles: Do you have through service without [fol. 1511] change of trains from Thomasville to New Orleans?

The Witness: No, you have to change trains.

Examiner Stiles: How many times is it necessary that you change trains?

The Witness. You change at Montgomery. It depends

upon how you go.

Examiner Stiles: In other words, are they necessary changes?

The Witness. No, they are not necessary changes, no,

sir.

Mr. Reynolds: You have to change at Montgomery, don't you?

The Witness: You have to change at Montgomery.

Mr. Bruce: Do you mean you have through service from these points to New Orleans, for instance, Thomasville, Georgia, to New Orleans?

The Witness: Service?

Mr. Bruce: Through service, through trains?

The Witness: I said no, I said you had to change at Montgomery,

#### By Mr. Reynolds:

Q. In going from Thomasville to New Orleans, you do have to change at Montgomery?

A. That is right.

Q. In going from Thomasville to Memphis, you also have to change at Montgomery, don't you?

A. That is correct.

[fol. 1512] Q. In going from Bainbridge to Birmingham you have to change in Montgomery, don't you?

A. That is correct. The Coast Line stops at Montgomery.

Q. In going from Thomasville to Montgomery, the train stops at Dothan, doesn't it?

A. That is correct.

Q. And the passenger can get off the train at Dothan and purchase a coach ticket at the intrastate fare rate from Dothan to Montgomery?

A. He can.

Q. I neglected to ask you, Mr. Lynch, to describe the line of the Atlantic Coast Line Railroad in Mabama.

A. Well, the Coast Line in Alabama, we will start at Montgomery. It runs from Montgomery to the Chattahoochee River to Alaga, Alabama, a distance of around 150 miles. It has three branches, one from Sprague to Luverne,

from Waterford to Elba, and from Grimes to Abbeville. They are short branches.

Q. What is your next Exhibit?

Examiner Stiles: Before you go to the next Exhibit, take this illustration from Bainbridge to Dothan and Dothan to Birmingham.

The Witness: That is correct, yes, sir.

Examiner Stiles: As I understood it, there is a through train, but the train stops at Dothan?

[fol. 1513] The Witness: That is correct.

Examiner Stiles: So the passenger could get off and purchase a ticket?

The Witness: He can.

Examiner Stiles: How long does the train stop there, does your schedule show?

The Witness: One of them is 5 minutes I believe and the other is 8 minutes, if my recollection is correct. A copy of this was filed in answer to the questionnaire from the Alabama Commission. At Dathan one has 10 minutes and the other has 8. No, that is southbound, going in. They both have 5 minutes coming into Montgomery in this particular instance.

Examiner Stiles: They have 5 minutes?

The Witness: 5 minutes.

Examiner Stiles: Do you think it is probable that a passenger in these days of crowded stations would be likely to figure on purchasing a ticket in that 5 minutes, get off the train, go in there and get his ticket in the crowd and get back on the train? Does it seem to be a probable thing to you?

The Witness: Well, he can do it, Mr. Examiner.

Examiner Stiles: Does it seem a probable thing to you?

The Witness: Well, the public is generally taking advantage of all savings they can figure. I admit it is not [fol. 1514] probable, but it is there, yes, sir, an opportunity for them to do it.

By Mr. Reynolds:

Q. Mr. Lynch, isn't it possible for the passenger to re-buy on the train?

A. That can be done.

Examiner Stiles: Is the cash fare higher than the ticket fare?

Mr. Reynolds: Do you have a penalty in other words for purchasing a ticket on the train?

Examiner Stiles: They used to have. Do they still have that?

The Witness: I understand it is higher, yes, sir.

Mr. Bruce: 10 cents. Mr. Reynolds: 10 cents.

#### By Mr. Reynolds:

Q. A penalty of 10 cents?

A. That is correct, that is my understanding.

Q. He could still save 54 cents, couldn't he?

A. The Examiner was talking about from Bainbridge to Birmingham. He could save more than that.

Q. He could still save \$1.01?

A. \$1.02.

Q. What is your next Exhibit, Mr. Lynch?

A. This is an Exhibit which shows the manner in which the lower basis of fares intrastate in Alabama results in discrimination against interstate passengers. It shows [fol. 1515] from Thomasville to Ozark, Alabama, a distance of 118.8 miles, the passenger pays \$2.64. From Dothan to Montgomery, a distance of 119 miles, the passenger pays \$2.00. The interstate passenger travels two-tenths of a mile less than the intrastate passenger and pays 64 cents more. They both have the same trains available, and the same equipment available.

(Exhibit No. 10, witness Lynch, marked for identification.)

#### By Mr. Reynolds:

Q. Is the Atlantic Coast Line encountering any particular difficulty and expense in connection with passenger train operations under present conditions?

A. Yes, it is. The present conditions, due to the large increase in travel, causes considerable additional expense. We have been forced to practically double the ticket forces in a large number of our ticket offices, and frequently we are called upon to supply conductor's helpers on a large number of our trains.

Further, in handling troop movements, we have the added cost of assembling equipment at point of origin, which necessitates deadheading equipment for long-distances in many cases. And after the movement has been completed that equipment has to be returned to the starting point in a number of instances.

Mr. Bruce: Are you talking about troop movements now? The Witness: That is correct.

## [fol. 1516] By Mr. Reynolds:

Q. Go ahead, sir.

A. Further, we must have a representative riding the troop trains, which is an additional expense. Moreover, in order that we may at all times be in position to take care of the Government requirements it has been necessary to increase the personnel in our general offices, so that we may furnish 16 to 24 hours service. This, of course, is an additional expense.

Since 1939 we have spent considerable money in remodeling and air conditioning passenger equipment, in an effort to recapture travel from other methods of transportation.

During this period we have air conditioned or purchased new with air conditioned facilities a total of 123 coaches. Of this number 50 are equipped with reclining seats, with an average capacity of 52 persons per car.

Q. By the way, do you operate air conditioned coaches on your line from Montgomery to the Georgia line?

A. We do. We have two air conditioned coaches on each train, and we have an extra coach for over-flow travel that is not air conditioned.

Q. That train handles both interstate and intrastate passengers?

A. That is right.

Q. Go ahead, sir.

A. Of this number, 50 cars are equipped with accommodations for an average capacity of 52 persons. 19 of these cars were remodeled from so-called standard weight [fol. 1517] straight back seat coaches, which had an average seating capacity of 88 persons.

It can be readily seen that two of the old type coaches would accommodate more passengers than three of the new 52 seat type, which means lower revenue per car. Out of the remaining 31 air conditioned coaches—

Examiner Stiles: "Means lower revenue per coach"? That would be simply if you were carrying the passenger coach capacity in each case, both before and after remodeling?

The Witness: How is that!

Examiner Stiles: If you were simply carrying the coach capacity!

The Witness: That is correct.

Examiner Stiles: Of course, you are not asserting that

that is all you are carrying at the present time?

The Witness: By no means. Of the remaining 31 air conditioned coaches, 15 are the new conventional weight, deluxe coaches, and 16 are the light weight type, all with air conditioning apparatus.

All of these 50 coaches just mentioned are equipped with dressing rooms for both ladies and men, with soap, towels,

drinking cups furnished without charge.

Examiner Stiles: Didn't you always furnish the towels and drinking cups without charge? That is nothing new, is it?

The Witness: Well, I have been on them that didn't have

[fol. 1518] them.

Mr. Reynolds: I think it is new, Mr. Examiner. I don't know of any day coaches in the old days on which they had towels without charge.

Examiner Stiles: You are speaking of the day coaches?

The Witness: I used to ride them from-

Mr. Reynolds: Yes, sir, he is talking about day coaches.

The Witness: These air conditioned coaches. I used to ride them in the old days to Lynchburg, Virginia, and I don't remember ever having had a towel.

## By Mr. Reynolds:

Q. Go ahead, Mr. Lynch.

A. The Coast Line has purchased during the last five years three new streamline passenger trains, with a total of 16 coaches, 5 combination baggage coaches, 5 dining ears, and 5 lounge observation cars; also 29 Diesel-electric locomotives for passenger train service; two passenger representatives and two maids accompany these trains from origin to the destination. There is one attendant to each two coaches also provided. Naturally these refinements add to the expense of our operations.

Mr. White: Do you operate any of those streamlined trains into Alabama?

Mr. Reynolds: He is coming to that.

The Witness: None that we own. We operate a third day [fol. 1519] train which we participate in the movement of, one train every third day.

. Mr. White: That is Chicago to Miami?

The Witness: That is correct. In addition to these improvements the Coast Line has remodeled and air conditioned four standard weight passenger baggage coaches with 20 reclining seats, which are used principally for the accommodation of the colored traffic.

Moreover, we have remodeled and equipped six air conditioned tavern lounge cars, containing 44 seats. They are equipped with radio, supplied with magazines, and provide buffet service, for which from 2 to 4 attendants are necessary. This service greatly increases the cost of pas-

senger operation.

The Atlantic Coast Line handles over its line in Alabama one of the so-called Chicago to Miami streamliners. This train, known as the South Wind, is a reserve seat coach train, and operates every third day. It consists of seven cars with a total seating capacity of 293 persons. Of this number, 35 seats are in the lounge-observation car, and are restricted to sale over each individual railroad participating in the operation of the service.

## By Mr. Reynolds:

Q. You mean by that when the South Wind gets to Montgomery, going southeast, you have 35 seats in the lounge car which can be sold to passengers for Dothan and Ozark and points east of there?

[fol. 1520] A. That is correct, on the Coast Line.

Mr. White: You mean if they are not occupied when it gets to Montgomery?

The Witness: They are for sale over each individual road participating in the operation of the train. In ordinary times those seats have not been sold.

### By Mr. Reynolds:

Q. Do I understand it then that this train operates in connection with the L&N?

A. That is correct.

Q. And that the L&N cannot sell seats in that lounge observation car beyond Montgomery?

A. That is correct.

Q. And when the South Wind gets to Montgomery, there are 35 seats to be sold by the Atlantic Coast Line to passengers going to Dothan, Ozark, and points east?

A. As far as Jacksonville,

Mr. White: You mean to say a man cannot buy one of those seats in Chicago to Miami?

The Witness: That is correct.

Mr. White: And he cannot buy one in Birmingham to

The Witness: Not in the lounge car. Those seats are assigned southbound by the Pennsylvania, the seats on the train. Northbound they are assigned by the East Coast. They distribute the diagram, which shows where each seat is on sale, which seats for each city.

[fol. 1521] Mn White: How many such seats do you have on this train, I mean these lounge seats?

The Wifness: There are 35 in the car.

Mr. White: And that is the only seats of that sort?

The Witness: That is right. Mr. White: On that train?

The Witness: That is right, that is correct.

#### By Mr. Reynolds:

Q. Of course, if the seats in the coaches have not been sold beyond Montgomery, they also can be sold, can't they!

A. That is correct.

Q. All right sir, Mr. Lynch, proceed.

Mr. White: Do your tariffs filed with the Alabama Commission and the Interstate Commission make any such provision as you have just stated about these seats?

The Witness: Not that I know of, sir.

Mr. White: That is something unusual I think:

Mr. Reynolds: It may be unusual, but it is a fact.

Mr. White: I never heard of it before.

Mr. Reynolds: Proceed please.

Mr. White: All right.

## By Mr. Reynolds:

Q. All right, proceed.

A. I showed in the answer which we filed, which the Coast Line filed dated June 12, to the questionnaire received from the Alabama Commission, this train stops at Dothan, Ozark, [fol. 1522] and Montgomery on the Atlantic Coast Line.

Mr. Bruce: Those are the only stops in Alabama?

The Witness: That is correct. It is available to intrastate passengers who pay 1.65 cents per mile as compared with the interstate charge of 2.2 cents per mile.

## By Mr. Reynolds:

Q. Mr. Lynch, Mr. Bruce interrupted you to ask if those were the only three stops in Alabama. The train also stops at Birmingham, doesn't it?

A. I said on the Coast Line. The train stops at Birming-

ham on the L. & N.

Mr. Reynolds: Mr. Examiner, I ask that Exhibits 9 and 10 be received in evidence. And the witness is ready for cross examination.

Examiner Stiles: Exhibits 9 and 10 are received in evi-

dence.

(Exhibits Nos. 9 and 10, witness Lynch, received in evidence.)

Mr. Bruce: I have an objection. Will you note the objection?

Examiner Stiles: Yes.

Mr. Bruce: On Exhibit No. 9.

Examiner Stiles: On the same ground as all the previous Exhibits, of the same character?

Mr. Bruce: The same objection as I have made.

Examiner Stiles: The record will show the objection.

#### Cross-examination.

#### By Mr. Bruce:

Q. All of these new employees that you have had to em-[fol. 1523] ploy, were they necessary in conducting your business between Dothan, Alabama, and Montgomery, Alabama?

A. By no means.

Q. These are the two principal points on your line in Alabama, are they not?

A. Ozark is a rather important point.

Q. On your streamliner, you don't stop at Ozark?

A. We do.

Q. You do?

A. We stop there to pick up people for Montgomery or beyond.

Q. Montgomery north !.

A. That is correct.

Q. In other words, you don't stop there to pick up any passengers from Ozark to Troy?

A. That is correct.

Q. What causes this added number of employees that you have hired?

Mr. Reynolds: He went all into that. I don't see why this gentleman on cross-examination—

Mr. Bruce: I mean as it applies to Alabama.

Mr. Reynolds: Let me finsh. I don't see why this gentleman should ask the witness to repeat what he said on direct. If he has any questions to ask him about the statements he made on direct, it looks like to me he can ask him without going to the necessity of getting him to repeat again what he [fol. 1524] has already stated.

Mr. Bruce: He is talking about the system, Mr. Examiner. He was not talking about as it applied between Dothan and-Montgomery. I am talking about as it applies between Dothan and Montgomery at the present time. He was talk-

ing about the Atlantic Coast Line.

Q. Isn't that right?

A. That is correct, generally.

Q. I want to know what added expense the Atlantic Coast Line has incurred, and the reason for the added expense,

between Dothan and Montgomery?

A. Well, that would be a difficult question to answer, Mr. Bruce. We have a camp at Daleville, about twenty-five or thirty thousand men, adjacent to Ozark. Naturally we have had to increase our ticket forces.

Q. For the camp, is that right?

A. Well, a great many of those people go to Ozark and get on the train.

Q. Are these troops that you are talking about traveling?

A. They are troops. They become furloughees, in many

cases, that get on the train.

Q. You stated you were forced to acquire by borrowing, or whatnot, a considerable amount of added equipment. Is that added equipment used in the transportation of intrastate passengers in Alabama, that is civilian passengers? [fol. 1525] A. Well, Mr. Bruce I don't think I said that we were forced to acquire added equipment.

Q. Not acquire, but I mean lease added equipment, or

borrow, or whatever you do?

A. I don't think I said that. I said we purchased or reconditioned certain equipment.

Q. You leased equipment?

A. Not leased equipment, reconditioned our own, or purchased new equipment, air conditioned.

Q. This air conditioned equipment you are talking about,

is that altogether on the streamliner? .

- A. No, it is on our two local trains between Montgomery and Savannah, Georgia. We have two coaches on that that are air conditioned, two on each train.
- Q. Do you have an attendant on every two coaches on that train?

A. No.

- Q. But you do have an attendant for every two on the streamliner?.
  - A. That is correct.
- Q. And that streamliner crosses the State of Alabama. Where does it come in at?

A. At the Tennessee-Alabama line.

Q. Into Birmingham?

A. You mean over the Coast Line?

[fol. 1526] Q. Yes.

A. Going north or going south?

Q. No, coming south, what line does it come over!

A. It comes in over the L. & N. and runs through Birmingham and Montgomery, and goes out at the Chattahoochee River at Alaga.

Q. Do you serve any intermediate points between the Alabama-Tennessee line excepting Birmingham, between Montgomery and the Alabama Tennessee line on your streamliner?

A. Do we serve it? The Coast Line does not go beyond Montgomery. It stops at Birmingham on the L. & N.

Q. I mean that streamliner train in its operations throughout Alabama.

Mr. Reynolds: We told you where it stopped, Birmingham, Montgomery—

Mr. Bruce: I want to know-

Mr. Reynolds: -Ozark and Dothan.

Mr. Bruce: I want him to state in the record whether or not that train stops between Birmingham and Montgomery, the streamliner.

The Witness: It is not advertised to stop. That is an L. & N. operation.

By Mr. Bruce:

Q., It is not scheduled to stop then?

A. That is correct.

Q. And it does not stop between Birmingham and the Alabama-Tennessee line, does it?

[fol. 1527] A. It is not scheduled to stop.

Q. Well, does it stop?

A. I happen never to have ridden it. I can't answer that question unless I rode it every day, to see whether it ever stopped.

Q. Now, you said something about an increase in the handling of troops. You had an increased cost of operation in handling troops have you?

in handling troops, have you?

A. We have to deadhead a lot of this equipment.

Q. That is coach equipment?

A. Correct. Sometimes it is pullman equipment, or tourist equipment.

Q. Does that increase your empty car miles?

A. That seems self-evident.

Q. Have you had any trouble in regards to the operation of your trains through your various terminals?

A. What sort of trouble, Mr. Bruce?

Q. Tell me whether you have had or not. I don't like your answer. Have you had any trouble in operating your trains through your terminals, through the terminal at Dothan, because of troop movements?

A. Well, I don't know as I exactly understand you. You will have to be a little more specific.

Mr. Reynolds: Well, I don't know that I understand what the gentleman wants either, but if you do understand it; [fol. 1528] answer to the best of your ability. The Witness: Well, I don't understand what he wants to know.

Mr. Bruce: All right. You will force me into an explanatory series of questions.

#### By Mr. Bruce:

- Q. How long are your troop trains, how many cars?
- A. Confined solely to troops?
- Q. Troops?
- A. No freight?
- Q. Whatever a troop train is comprised of. It might have freight on it. You handle freight in conjunction with your troop movement, don't you?
  - A. At times, yes, sir.
  - Q. That is the property of the troops?
- A. That is correct, or rather of the United States Government.
  - Q. How long is such a train?
- A. Well, I have seen them 50 cars long, but not generally. Generally they run around 35.
- Q. Are your leads in your passenger stations long enough to accommodate 50 cars 1.
  - A. I couldn't answer that, Mr. Bruce, I don't know.
- Mr. Bruce: The Seaboard will have an operating witness?
  - Mr. Reynolds: This is a Coast Line witness. No, sir.
  - Mr. Bruce: I mean the Coast Line?
- [fol. 1529] Mr. Reynolds: No sir, they will not.
- Mr. Bruce: Mr. Examiner, in the showing made before the Alabama Commission that particular point was stressed, that terminal delays is one of the greatest extra costs incident to the troop movements, because of the fact that the majority of terminals do not have tracks in there, leads into the station, which would accommodate over an ordinary passenger train.

Examiner Stiles: I don't think they have asserted that

so far in this hearing.

Mr. Bruce: I didn't hear you.

Examiner Stiles: I say I don't think they have asserted that so far in this hearing.

Mr. Bruce: No, but we are being tried at the present time on the evidence, the Alabama Commission is being tried at the present time on the evidence which was submitted to the Alabama Commission. All of these things were brought before the Alabama Commission.

Mr. Reynolds: We are not trying the Alabama Commission on the evidence that was brought before that Commission, or on any other evidence. We are not trying the Alabama Commission, we have a petition before the Interstate Commerce Commission asking that Commission to grant us certain relief which we think we are entitled to under the law. We are not trying the Alabama Commission.

[fol. 1530] Mr. Bruce: Are you advancing the theory here that the preceding witnesses have not testified only as to the extra cost of operation as it pertained to the troop movement?

Mr. Reynolds: I merely answered your assertion that the Alabama Commission is on trial. I say they are not. We are asserting a right given us by the Interstate Commerce Act. We are not trying the Alabama Commission or any other Commission.

Mr. Bruce: The order of the Alabama Commission is at the present time before the Interstate Commerce Commission to determine whether or not the Interstate Commerce has been prejudiced, and unduly prejudiced, and whether or not intrastate commerce has been unduly preferred by the action of the Alabama Commission.

Examiner Stiles: Let's proceed with this cross examination. You asked the question of the witness whether they had had certain trouble, and he didn't know what you meant by that trouble, so you were proceeding to develop it.

Mr. Bruce: Mr. Examiner, I am trying to find-

Examiner Stiles: Have you anything further on that line?

Mr. Bruce: I am trying to develop from this witness whether he knows what creates the extra cost of operation that he has spoken of.

Mr. Reynolds: I will say in all fairness to the witness he is not an operating witness. He is Assistant General [fol. 1531] Passenger Agent. He doesn't know anything about railroad operations.

Mr. Bruce All right then, on what testimony is the Commission going to rely in regards to the so-called abnormal expense that the Atlantic Coast Line has incurred? You have a witness, and he is the only witness.

Mr. Reynolds: The witness knows about the extraordinary expenses, but when you ask him about lead tracks into stations, and things of that sort, you are getting over his head.

Mr. Bruce: All right, I will desert that question.

# By Mr. Bruce:

- Q. I am going to ask you now, do you have train escorts on strictly civilian passenger trains?
  - A. Train escorts
  - Q. Yes sir.
  - A. No.
- Q. You stated you had train escorts on your troop trains, do you not?
  - A. That is right.
- Q. Do you have the same kind of escort on a passenger train?
- A. No. That is something that is required by the Government, to put them on troop trains.
- Q. Of course, I don't care who prescribed the condition, what I want to know is—you have answered the question. Does the military passenger traveling on a Government transportation request pay the same rate as an interstate [fol. 1532] passenger traveling on the same train?
  - A. It depends upon where he travels from.
  - Q. He is traveling under Government orders?
  - A. It depends where he was traveling.

Mr. Reynolds: You had in mind-

#### By Mr. Bruce:

- Q. Say from Montgomery to Thomasville?
- A. Right, less a certain amount, 5 per cent.
- Q. In other words, he pays less, does he not?
- A. That is right.
- Q. A man on furlough in uniform, what does he pay?
- A. 11/4 cents.
- Q. Presuming that a man was traveling from Bainbridge, Georgia, to any point in Georgia, riding on the same train in coaches, and he had a first class ticket, what would he pay, what fare would he pay?
- A. You said riding from Bainbridge, Georgia, to any point in Georgia?

Q. With a first class ticket?

A. Riding in a coach?

Q. Yes.

A. Mr. Bruce, the coach fare and the unrestricted fare are different.

Q. I am not talking about coach fare, I am talking about the first class fare?

A. 2.2 cents a mile.

[fol. 1533] Q. Would he pay 2 cents a mile?

A. 2.2 cents a mile in Georgia.

Q. On a first class ticket?

A. Unrestricted.

Q. What would he pay if he was traveling an equal amount of miles in Alabama on the Atlantic Coast Line?

A. He would pay 3.3.

Mr. Bruce: That is all I have. Thank you.

Mr. Reynolds: I want to ask you one or two questions.

Redirect examination.

# By Mr. Reynolds:

Q. Mr. Lynch has it been necessary to increase your station employees at Montgomery and Ozark, do you know, especially your ticket employees?

A. I am not positive, Mr. Reynolds. I understand it has been. I haven't seen a roster of the employees of several years ago, in comparison with this time.

Mr. White: As a matter of fact, Mr. Lynch, the station at Montgomery serves not only your line but all other lines that come into Montgomery, into the Montgomery passenger stations?

The Witness: That is right.

## By Mr. Reynolds:

Q. At points like Montgomery, near which camps are located, a great many friends and relatives, civilians, come to see the soldiers at the camps, don't they?

A. That is true.

Mr. Reynolds: I haven't anything further. [fol. 1534] Mr. Bruce: I have another question.

#### Recross-examination.

#### By Mr. Bruce:

Q. Have you increased your number of passenger trains serving civilian passengers between Dothan and Montgomery for the past year?

A. You cannot increase them, sir, without authority.

Q. I know that the ODT has frozen the number of trains, but that order has not been effective throughout the past year?

A. It has been with us.

Q. Have you increased your number of trains for the past two years between Montgomery and Dothan?

A. No.

Q. But you have handled a great number of troop trains between Montgomery and Dothan, have you not, or between Montgomery and some other point?

A. I suppose we have, yes sir, quite a number.

Q. I am asking you if you know! Do you know?

A. Yes sir, I know we have.

Mr. Bruce That is all.

Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: Let's take a short recess.

(Short recess.)

Mr. Reynolds: I will call Mr. Higgins.

Examiner Stiles: Mr. Bruce asked if we might have the [fol. 1535] last witness recalled, Mr. Reynolds.

Mr. Reynolds: Yes sir.

T. K. Lynch having been previously sworn, testified further as follows:

Cross-examination.

#### By Mr. Bruce:

- Q. Have you ever received any complaints from any one about the so-called discriminatory rates in Alabama?
  - A. Personally I have not.
  - Q. And has any locality ever complained to you?
  - A. Not to me.

Q. Do you know whether they have complained to your line, that is to the Atlantic Coast Line?

A. I do not.

Mr. Bruce: That is all.

(Witnessed excused.)

Mr. Reynolds: I will call Mr. Higgins.

J. A. Higgins was sworn and testified as follows:

Direct examination.

By Mr. Reynolds!

Q. Mr. Higgins, please state for the record your name,

address, and occupation.

A. J. A. Higgins, General Passenger Agent, I suppose for the Western Railway of Alabama in this case, the A&WP on the other hand, and the Western Railway of Alabama on this end.

Q. How long have you occupied your present position?

[fol. 1536] Off and on about 32 years.

Q. Will you describe the location of the Western Railway

of Alabama in Alabama, between what points?

A. It extends from Lanett, Alabama, and ends in Selma; Alabama, a distance of about 137 miles, 87 miles from

Lanett to Montgomery, and 50 miles beyond.

Q. Have you an Exhibit, Mr. Higgins, comparing the cost to a coach passenger of traveling intrastate in Alabama, with the cost to a coach passenger of traveling approximately the same distance between a point in Alabama and a point in an adjoining State.

A. Yes sir.

Mr. Reynolds: May that be marked for identification as Exhibit No. 11?

Examiner Stiles: It may be so marked.

(Exhibit No. 11, witness Higgins, marked for identification.)

By Mr. Reynolds:

Q. That Exhibit is just like others previously introduced, and I don't think it is necessary to go into any explanation of it. It is self-explanatory?

A. Yes sir.

Q. What is your next Exhibit?

-A. I have several Exhibits which reveal various combinations on which the through fares can be defeated.

Q. Identify the one that you want marked Exhibit No. 12.

A. It has the figure "41 cents" as the difference in fare.

[fol. 1537] (Exhibit No. 12, witness Higgins, marked for identification.)

Q. What is the one you want marked No. 13?

A. It shows a difference in fare of 33 cents.

(Exhibit No. 13, witness Higgins, marked for identification.)

Q. And the other one is No. 14?

A. That is right, showing 74 cents.

(Exhibit No. 14, witness Higgins, marked for identification.)

Q. Exhibits 12, 13, and 14 show how the through interstate published fares can be defeated by a passenger purchasing tickets at the rate of 1.65 cents per mile for the portion of the journey in the State of Alabama, is that correct?

A. Yes. Now, that to some may seem conjectural, but there is a possibility and whenever there is a possibility, there is effectiveness. And from personal observation, not from knowing the witnesses, or anything like that, but sitting in a ticket office daily and bearing passengers come in and make inquiries for the rate we will say from Atlanta to Mobile, and we give them the published rate, which is the interstate rate, they say there are all sorts of combinations by which it can be defeated, isn't there, "we have heard of that." The ticket agent says "Yes, but we are not allowed to sell you a ticket." The passengers are better educated on these rates than the average rate man today.

[fol. 1538] Q. Now, let's see if I understand what you

say. Do you go into the ticket office yourself?

A. Yes, I make it a common practice. It is a daily habit of mine to go over there and sit down after lunch from 1 o'clock to sometimes 2, 2:30 or 3 o'clock.

Q. When you are sitting there, do you hear it?

A. I hear these inquiries.

Q. You hear the inquiries?

A. Yes, they all try to get a certain rate going to Mobile or Montgomery or somewhere else, where Alabama is involved, or some other points, and they will use these combinations and say "I can buy to Lanett"; or "Buy to West Point or Opelika, and re-buy to Montgomery, and then re-buy".

Q. The passengers actually say that? They are actually

passengers?

A. They are, they say that. Some of them are the best educated men in the country, I'm telling you. They can use combinations that will make you open your eyes.

Q. You have had considerable experience in passenger

traffic matters, haven't you?

A. I have, for many years.

Q. Do you know any reason why the intrastate fare within the State of Alabama should be less than the interstate coach fare from a point in Alabama to a point in an adjoining State?

A. I do not, because, we all know that the philosophy of [fol. 1539] the Interstate Commerce Commission has al-

ways been non-discrimination.

Mr. Reynolds: I will ask, Mr. Examiner, that Exhibits 11 to 14 be received in evidence. I have not asked the witness to explain them. They are just like prior Exhibits. Unless somebody wants to ask something about them, I think they speak for themselves.

Mr. Bruce: Before they are received I wish to enter the

same objection.

Examiner Stiles: The objection goes only to 12, 13, and 14, I take it?

Mr. Reynolds: Let me point out that while we agree with your ruling, Mr. Examiner, that the objection is untenable, this witness has given actual instances where a passenger has come into the station while he was there in the ticket office and they have told the ticket agent that the lower intrastate fare, coach fare within Alabama, enabled them to defeat the through interstate fares.

Mr. White: I don't think the witness though has stated—maybe I am testifying as Counsel is testifying—that he knows where any of these supposed passengers have actually defeated the interstate rate.

The Witness: The natural assumption, Mr. Chairman, would be a man that is acquainted with any possible com-

bination would certainly not sit down and not avail them-[fol. 1540] selves of it, where they can save from 90 cents to two or three dollars.

Mr. White: He might be a law abiding citizen, he might

not want to defeat it. ..

Mr. Reynolds: The Alabama Commission ought not to give him the incentive to violate the law by making fares in Alabama lower than the interstate fares.

Examiger Stiles: Exhibits 11 to 14, inclusive, are re-

ceived in evidence.

(Exhibits Nos. 11 to 14, inclusive, witness Higgins, received in evidence.)

Examiner Stiles: Are there any further questions, Mr. Reynolds?

Mr. Reynolds: I have no further questions.

Examiner Stiles: Cross-examine.

Cross-examination.

## By Mr. Bruce:

Q. Mr. Higgins, where is this station that you visit all the time?

A. Atlanta, Georgia, joint ticket office, Atlanta, which serves the Central of Georgia, the Atlanta-Birmingham and Atlantic, the L&N, NC&StL, and Georgia railroads.

Q. You hear that? Where do you sit? Do you listen-

to all of the clerks?

A. I didn't say clerks, I listen to the passengers, because today it is a very interesting study, to go in there and see the number of passengers trying to travel and to purchase tickets. We have a settee on the side.

[fol. 1541] Q. It is anusual to have that many passengers; you have only had that many passengers for the last year

or so, is that right?

A. That is right.

Q. Has any one ever complained to you about discrimi-

nation against them?

A. Yes, some of them, that is those educated, and the traveling man that has got common sense and intelligence, it does look damn cheap to come in there and have to pay so much interstate, when they can go down in Alabama and get some cheaper rate.

Q. Do any of these so-called traveling men that you have listened to ever complain about the 2 cents first class fare in Georgia?

A. Complain?

Q. Yes.

A. No, they have not complained about the 2 cents fare. That is not in issue now

Q. There is a 2 cent fare at the present time in Georgia?

A. Yes.

Q. That applies on first class fares within Georgia?

A. First class, yes, sir, 2.2.

Q. 2.21

A. Yes, sir.

Q. Has anybody ever complained to you about that?

A. No.

Q. They just complained to you about the Alabama [fol. 1542] struction in Atlanta, is that right?

A. They complain of the fact that the combination of rates is much less than the through published rate. And the unfortunate part about the whole situation, as you must realize, is the non-uniformity. If we had a uniform rate from "A" to "B" and from "C" to "D", there wouldn't be any complaints, we wouldn't be here today.

Q. You don't mean to say that the Atlanta office is selling that kind of a ticket, are you?

A. No, they are not allowed to sell a ticket on unlike

Q. Would the same thing apply in buying a ticket from some point in Alabama to a border point in Georgia! Could you not buy a combination on the frip there, can't you buy a Georgia intrastate ticket that would defeat the first class rates?

A. Certainly. What is workable in one direction is bound to be workable in the opposite directions, as between two given points:

Q. The first class passengers do not complain about that?

A. No.

Q. Can you name anybody that has made this complaint to you?

A. Name them? No. They don't have to make a complaint. The natural observation indicates what is in the

mind of the passengers, and that is to beat a through rate.

Q. They could defeat the through rate-

A. Certainly.

[fol. 1543] Q. You have had no complaints whatsoever made against the situation?

A. No, not any specific complaint against Alabama rates

at all.

Q. What they are trying to do is to avail themselves of the low fares?

A. Of the combination.

Mr. Bruce: That is all I have. Mr. Examiner, I don't know whether the record shows it, but I have entered the same objection. I think I made the same objection against Exhibits 12 to 14, inclusive.

Mr. Miller: One question.

## By Mr. Miller:

Q. In your observation of these passengers who talk with the ticket agent concerning these combinations, is it your observation that they eventually buy a through ticket at the interstate rate, or simply buy—

A. They use the combination.

Q. They use the combination?

A. Yes,

Mr. Bruce: They don't buy a ticket?

The Witness: No, they don't buy a ticket. Naturally, he is going to buy at the combination, they are not going to pay the interstate fare when they can get a combination. If you have a pair of shoes for \$6.75 and a man across the street has a pair for \$5.75, which one are you going to buy,—the shoes are of the same quality.

[fol. 1544] Mr. Bruce: You are on the witness stand.

You tell them which one you would buy.

The Witness: You know what one I would buy.

Redirect examination.

## By Mr. Reynolds:

Q. Let me ask you this. Do you mean to say that when you are in the passenger station there at Atlanta—

A. Joint ticket office. Get it right.

. Q. Joint ticket office, excuse me, a passenger comes in and asks what the fare is from Atlanta to Mobile?

A. Yes, sir, or any other point in Alabama.

Q. Take that as an example, going west, then instead of buying from Atlanta to Mobile, he will buy from Atlanta to Opelika, we will say?

A. We will say to West Point, he will buy to West Point at the coach rate, 1.65. He will skip West Point to Lanett, which is a distance of about three-quarters of a mile. The conductor will come along and naturally collect his fare. The Alabama fare is 1.65, the same as Georgia. You have the two component parts making a through rate, but not a ticket is sold at that through rate.

Q. This passenger does not buy a through ticket from Atlanta to Mobile?

A. No, sir, he buys to West Point.

Q. All right.

A. He does that because he wants to get through the gate [fol. 1545] on the train.

Mr. White: Do all of your trains stop at Lanett?

The Witness: No, sir, not now, they used to.

Mr. White: How many of them now do not stop at Lanett at all?

The Witness: None of them stop there.

Mr. White: None of them stop at Lanett?

The Witness: No, but he can flag, or he can pay the conductor from Lanett down.

Now, Mr. Chairman, you know as well as I do, that with the crowded trains, the conductor, a man gets on at West Point, and after receiving his orders, the conductor has been there five or six minutes, he comes on into Montgomery, and it takes a long time to start at the front and go back to the rear. In the meantime, that man can say "I got on in Lanett".

Mr. Bruce: How do you know that?

Mr. Reynolds: Answer President White's question.

Mr. White: If your conductor knows the train didn't stop at Lanett, and started from West Point, coming on to Montgomery and to Mobile, he wouldn't sell him a ticket from Lanett, would he?

The Witness: No:

Mr. White: To Mobile?

The Witness: No, but if he said he got on at Lanett, and perhaps Lanett—he may have stopped, he couldn't [fol. 1546] charge any more than the agent's rate at a non-stop point.

Mr. White: I thought you just testified-

The Witness: We will eliminate that.

Mr. White: -that the train didn't stop at Lanett.

The Witness: They don't stop at Lanett. Let's go back to West Point, using the same argument. By the time he got from the head of the train going back to West Point, he would say "I didn't have time to buy that ticket at West Point".

Mr. White: If he bought a ticket from West Point, Georgia to Mobile, Alabama, he would pay the interstate rate?

The Witness: Interstate fare, yes, sir.

# By Mr. Reynolds:

- Q. All of your trains do stop at Opelika though, don't they?
  - A. Oh, yes.
  - Q. And he could buy to Opelika and re-buy from Opelika?
  - A. That's right.

## Recross-examination.

# By Mr. Bruce:

- Q. How do you know that these passengers do that? How do you know they perform this operation that you claim of buying a ticket at West Point or Lanett?
  - A. How do we know that?
  - Q. Yes.
- A. We know from common intelligence, where the possibility is there, it is going to be effective. You know, when people are traveling they translate or transmit to each [fol. 1547] other the experience by which they can defeat the railroad rules.
- Q. Is that a conception of yours that they do that, but you don't know?
- A. It is not only my conception. If it was, I would probably make some money out of it, I would inaugurate a plan.

Q. Do you personally know that they do that, have you seen anybody that did that?

A. I have been told by the conductors that they do that.

Q. You have been told that?

A. Yes. I know you say "hearsay evidence", you say that isn't so, but it is practicable, anyhow, it is practicable.

Mr. Bruce: All right.

Mr. Reynolds: All right, that is all. Examiner Stiles: You are excused.

(Witness excused.)

#### P. E. Geil was sworn and testified as follows:

Direct examination:

## By Mr. Lott:

Q. Where do you live and what is your business?

A. I live at Mobile, Alabama. I am passenger traffic manager for the Gulf, Mobile and Ohio Railroad.

Q. Briefly relate your experience in the transportation

business, Mr. Geil.

A. I have been in the traffic department of the old M&O, '[fol. 1548] and the present company, the Gulf, Mobile and Ohio, for the past 23 years. For approximately the past two and a half years I have been in the passenger department exclusively.

Q. Will you please describe the line of the Gulf, Mobile and Ohio Railroad Company in the State of Alabama over

which you operate a passenger train?

A. The GM&O operates passenger service over two lines in the State of Alabama, one extending from Montgomery to the Mississippi State line via Tuscaloosa, Alabama; the other extending from Mobile, Alabama, to the Mississippi State line via Citronelle, the Atlanta line is our main line from Mobile to St. Louis.

Q. What is the distance from Mobile to the Mississippi-Alabama State line north of Citronelle?

A. Approximately 60 miles.

Q. What is the distance from Montgomery via the GM&O through Tuscaloosa to the Mississippo-Alabama State line near Columbus, Mississippi?

A. 158 miles.

Q. Mr. Geil, how many passenger trains are operated between Mobile and the Mississippi-Alabama State line via Citronelle!

A. Two trains, one in each direction daily between Mobile, the southern terminus, and St. Louis, Missouri, the northern terminus, via Citronelle.

Q. What kind of train or equipment is regularly as-

[fol. 1549] signed to these passenger trains?

A. Diesel powered streamline equipment, with air conditioned coaches, all steel, individual reclining seats, buffet and dining car service.

Q. Do you have lounge accommodations for coach pas-

sengers?

A. Yes, sir. Coaches have lounge accommodations, magazines—

Q. Free for the passengers?

A. Yes, sir.

Q. Are there any cars regularly assigned to these trains which are I believe numbered 15 and 16 which are not air conditioned?

A. No, sir, all regularly assigned equipment on these particular trains are air conditioned coaches.

Q. How many stops do these trains numbered 15 and 16 make in the State of Alabama over the distance of 50 miles between Mobile and Mississippi-Alabama State line?

A. There are five scheduled stops, two of which are flag, and in addition, on Thursday of each week we stop these trains at Oak Grove, Alabama, for the convenience of the people living in that community going to Mobile for their shopping. It so happens that Oak Grove is off the highway, and they don't have available bus service. By a special agreement we arranged to stop these trains on Thursday of each week there.

Q. That is at the request of citizens of Oak Grove?

A. That is right.

Q. Coming over to the Montgomery division line, what [fol. 1550] passenger service is provided by your company between Montgomery and the Mississippi-Alabama State line, near Columbus, Mississippi?

A. We operate one train daily in each direction between the Mississippi State line, which originates at Artesia, Mississippi, the junction with the main line, and Montgomery, via Tuscaloosa. This train is a gas-electric motor train, with coach accommodations, a part of the motor car being used for passenger space, and an additional air conditioned all steel coach, with reclining seats and buffet, in the extra coach.

Q. That is an air conditioned car?

A. Yes, sir.

Q. What are the numbers of those trains?

A. Those trains are Nos. 115 and 116.

Mr. Bruce: Both of these are interstate trains, are they not, they are not local trains in Alabama? They offer local service?

Mr. Lott: I will ask the witness.

By Mr. Lott:

Q. Mr. Geil, are these trains that you have just referred to, Nos. 115 and 116,—are they not?

A. Yes, sir.

Q. They originate at a point just west of the Mississippi-Alabama State line and terminate at Montgomery in the State of Alabama?

A. Yes, sir, that is right.

Q. They handle both interstate and intrastate passengers?

[fol. 1551] A. Yes, sir, predominantly intrastate, however.

Q. Do you provide any other passenger train service on the so-called Montgomery district?

A. Yes, sir, in addition to trains 115 and 116 we operate trains 109 and 110 which are local trains between Tuscaloosa and Montgomery, Alabama.

Q. What is that distance please?

A. That distance is 107 miles.

Q. What equipment is regularly assigned to that local train which operates solely within the State of Alabama?

A. All steel coaches, air conditioned, individual reclining seats.

Q. That is a gas-electric train, is it?

A. Yes, sir.

Q. Does it make frequent stops?

A. It stops everywhere a passenger might care to get on.

Q. What are the numbers of those trains?

A. 109 and 110

Q. Do trains 109 and 110 handle intrastate passengers exclusively, or do they also handle interstate passengers?

A. They handle both interstate and intrastate.

Q. By virtue of your position as passenger traffic manager, do you have occasion to investigate the load factors of your various trains to determine whether there is sufficient equipment provided for passengers who care to use the trains?

[fol. 1552] A. Yes, sir.

Q. What has been your observation with respect to the crowded conditions, if any, in your passenger trains operated between points in the State of Alabama?

A. On the Montgomery district it is very seldom any one has to stand, with the possible exception of week ends, we

do stand them once in a while.

On those days, if we know we are going to have a heavy crowd, why we attach an additional coach. We have an additional coach standing by at Montgomery, and one at Tuscaloosa. But we have not experienced any over-crowded conditions on this division over here. To my knowledge we have never left a passenger at a station, nor had any complaint about standing.

Q. How about the line extending out of Mobile, your train-

Nos. 15 and 16?

A. With the exception of an occasional week end, seats are always available for the local intrastate passengers. But on week ends we operate one and as many as three or four extra coaches, depending on an anticipated traffic. Usually we have been able to seat most of the passengers; I would say, over holiday periods we stand them, but that applies to interstate as well as intrastate.

Q. So that intrastate passengers in Alabama have sub-

stantially the same facilities as interstate passengers?

A. Yes, sir, they have the benefit of air conditioned equip-[fol. 1553] ment, reclining seats, meal service; buffet service on all coach trains, and we have hostesses on the main line trains Nos. 15 and 16.

Q. Mr. Geil, witness Aiken testified that the Gulf, Mobile and Ohio was one of the several railroads who are respondent in this proceeding which are maintaining the regular 2 cents per mile fare for coaches for intrastate application in Alabama. Is that statement correct?

A. Yes, sir.

Q. That 2 cent basic fare has the 10 per cent increase attached to it?

A. Yes, sir.

Q. Have you prepared a statement showing the present basic passenger fares between points on the G. M. & O. in Alabama, one-way round trip coach, and first class?

A. Yes, sir,

Mr. Lott: I will ask this Exhibit be marked for identification Exhibit No. 15.

Examiner Stiles: The Reporter will so mark it.

(Exhibit No. 15, witness Geil, marked for identification.)

# By Mr. Lott:

Q. Mr. Geil, will you make such explanation as you care to make of Exhibit No. 15?

A. This Exhibit indicates that so far as the Gulf, Mobile and Ohio Railroad is concerned, in this proceeding our interests run only to the round trip coach and first class fares, [fol. 1554] our one-way fares intrastate in Alabama being now on a basis of 2.2 cents per mile, the same as interstate fares.

It indicates that we propose to increase our Alabama intrastate coach basis round-trip from 1.65 cents per mile to 1.98 cents per mile; and the round-trip first class fares from 2.475 to 2.75 cents per mile.

It also shows intrastate in the State of Mississippi; which is the neighboring State to the west, the basic fares of the Gulf, Mobile and Ohio Railroad are on the interstate basis.

Q. Is that by virtue of the authority or approval of any

regulatory body in Mississippi?

A. Yes, sir. Prior to the adoption of this interstate basis on intrastate traffic in Mississippi, a petition was duly filed with the Mississippi Public Service Commission, and after a hearing approved.

Q. This 2.2 cents one-way coach fare has been the basic fare within Alabama on your railroad for some months, has it not?

A. For a good many years, or rather I should say since the 10 per cent increase, general 10 per cent increase. But the basis of 2 cents per mile was in effect for a good many years prior to that time.

Q. Have you received any complaints from Alabama citizens or travelers as to the 2.2 intrastate rate which is in effect on your line?

A. No, sir, no such complaints have come to my attention.

[fol. 1555] Q. Mr. Geil, have you prepared or made a study and prepared a statement showing the examples of advantage and preference and prejudice as between persons in interstate and intrastate commerce in Alabama, as it affects your line?

A. I have:

Mr. Lott: I will ask that this statement just referred to be marked for identification as Exhibit No. 16.

Examiner Stiles: It will be identified as Exhibit No. 16 by the Reporter.

(Exhibit No. 16, witness Geil, marked for identification.)

## By Mr. Lott:

Q. The first two examples on your Exhibit 16 refer to the situation on the Montgomery district, and the third and four Exhibits refer to the situation on the line extending out of Mobile, do they not?

A. Yes, sir.

Q. And you have heard the testimony of other witnesses who presented similar statements earlier in this hearing?

A. Yes, sir.

Q. Was this Exhibit prepared for the same purpose, and are these examples similar to those given by previous witnesses?

A. They are.

Q. Do you have anything to add to the previous testimony with respect to the statements of this kind?

A. No, sir.

Mr. Lott: All right.

[fol. 1556] Mr. Bruce: Mr. Counsel, the first example, would not apply to your line in Alabama, would it, from the fact that you have a 2 cent fare in Alabama?

Mr. Lott: You see, the only manner in which the GM&O o is affected by this proceeding is the increase in the round-trip fare.

Mr. Bruce: It would not apply one-way?

Mr. Lott: That is right.

## ByMr. Lotts

Q. Your Exhibit 16 indicates, or, of course, refers to round-trip coach fares only?

A. I should have explained that the abbreviation. "RT Coach Fare" is intended to mean "Round-trip coach fares".

Q. Mr. Geil, have there come to your attention any in stances where passengers have indulged in the practice of re-buying tickets within Alabama, round-trip tickets within Alabama, in order to defeat a through round-trip rate from a point outside of Alabama to a point in Alabama.

a point-outside of Alabama to a point in Alabama?

A. I have heard it said previously that that practice was being indulged in, but it was not until just today that we had an occasion to actually make a direct investigation. We inquired of the train conductor coming in on train \$15\$ this morning if to his knowledge any one had ever been brought in from Mississippi and re-bought a ticket to Montgomery at some point on the route of \$115\$, in order to defeat the through fare, and he says that he knows of a number of cases where passengers have gotten off the train coming [fol. 1557] in from Columbus and points west, gotten off the train at Tuscaloosa, where there is usually a wait of about five or ten minutes, unloading and loading express and mail, and have actually gone into the depot and repurchased tickets to Montgomery.

Q. Do your passenger trains stop up close to the ticket

office at the station at Tuscaloosa?

A. Yes, sir, within I would say 30 feet of the ticket window.

Q. Is your station at Tuscaloosa used solely by the GM&O?

A. Yes, sir.

Q. And you are not obsessed with long lines of passengers waiting for tickets at that particular station, are you?

A. No, sir.

Q. It would be, as a practical matter, possible for a passenger to get off the train at Tuscaloosa, go in and buy his ticket, and come back and get his seat without any difficulty?

A. Yes, sir, and I can understand why they would do it. For example, from Columbus, Mississippi, to Montgomery, Alabama, the through interstate round-trip fare on basis of 1.98 cents per mile is \$6.65. The round-trip fare interstate from Columbus to Tuscaloosa is \$2.50. The round-trip fare from Tuscaloosa to Montgomery intrastate is \$3.30, a total of \$5.80, compared with the through interstate fare of \$6.65, or a saving of 85 cents.

And I know from my experience in passenger traffic work, [fol. 1558] and in the bus business, happening to be passenger traffic man of our Gulf Transport Company, our highway bus subsidiary, that local passengers quickly learn of

any opportunity or subterfuge to save money through the purchase of tickets. And I would not doubt but what there are a good many passengers coming from beyond the State of Alabama going to Montgomery that know of this situation and take advantage of the opportunity to re-buy at Tuscaloosa.

Q. Do you agree with Mr. Higgins that once these situations are discovered that the traveling public quickly are acquainted with it?

A. Yes, sir.

Q. To your own personal knowledge do you know of any other instances along your line where this re-buying privilege is carried on to defeat the through interstate rate?

A. Not in the State of Alabama, but I can state an exact case, a concrete case, and can substantiate the record with the correspondence. We had three passengers traveling from Philadelphia, Mississippi, to New Orleans, Louisiana, to attend the Sugar Bowl game.

Mr. Bruce: I object to that, that has nothing to do with

this case. .

The Witness: It illustrates how it can be done, how a through fare can be defeated.

Examiner Stiles: You are about to state how it has been

[fol. 1559] done in the State of Mississippi.

The Witness: From Philadelphia, Mississippi, to New Orleans an interstate case.

Mr. Bruce: I object, Mr. Examiner.

Examiner Stiles: The objection is sustained.

Mr. Lott: I have no further questions. I ask that Exhibits 15 and 16 be received in evidence...

Examiner Stiles: Those Exhibits are received in evidence.

(Exhibits Nos. 15 and 16, witness Geil, received in evidence.)

Exainmer Stiles: Cross examine.

. Cross-examination.

## By Mr. White:

Q. I would like to ask you this question: Was your oneway coach fare prior to the 10 per cent first increase granted in Ex Parte 148, which was also granted by the Alabama Commission, was your coach fare intrastate in Alabama as well as interstate, has that been 2 cents since

'the '36 passenger fare case?

A. Yes, sir. We have not at any time on this line reduced our fares to the basis of 1.5 cents a mile, except on our Louisiana division, but not in the State of Alabama, or interstate.

Mr. White: I thought that was correct. That is all I have.

Mr. Lott: Thank you sir.

[for 1560] Examiner Stiles: You are excused.

Mr. Bruce: Just a minute. I just asked the Examiner whether I could ask a few questions.

## By Mr. Bruce:

- Q. Have you ever seen any one personally buy a ticket in which the interstate fare was defeated by applying the combination, or I mean by using the subterfuge, or whatever you call it, of buying a ticket from Mississippi to a point in Alabama, and from a point in Alabama to another point in Alabama?
  - A. I have not personally, no, sir.

Q. Have your employees ever stated an individual's name that has done that?

A. No, sir, the first direct inquiry we have made is today, and we didn't have time, the conductor left at 3 o'clock today. We didn't get any specific names, and I doubt seriously if he could give names.

Q. You didn't ask the conductor if he could give you names?

. A. No.

Q. Have you ever instructed your ticket agent at Tuscaloosa not to sell that class of ticket?

A. I don't recall that we have put out any specific instructions in writing up to this time, but as a result of our disclosure today I intend to do so.

Q. Your lines is in need of money, is it not?

A. Yes, sir, and with particular reference to passenger traffic.

[fol. 1561] Q. Don't you think you as a general officer of the Gulf, Mobile and Ohio have been remiss in your duties, in not instructing your agents accordingly, that they should refuse to supply that class of ticket, from the fact it is unlawful, and that you are losing revenue thereby?

A. Our agents do not sell such tickets, and they have no knowledge that the passenger has originated outside of the State. A passenger gets off the train and runs in; the ticket agent has no chance of knowing that passenger came in on the train unless the conductor ran out behind him and identified him and told him not to sell him a ticket, that he had just come in on that train.

Q. You stated that the traveling public soon got on to such combinations of saving money. What class of passengers were you talking about at that time, occasional

passengers, or regular travel?

A. Take any passenger, the average passenger doesn't know the law, doesn't know that is prohibited by the law. If he sees an opportunity to save 50 cents or a dollar, he is going to do it. You and I would too, if we were not versed in the laws of the Interstate Commerce Commission and knew that it is unlawful to do that.

Q. I think you misunderstand me.

A. It is human nature.

Q. I asked you in your experience as a passenger ticket [fol. 1562] agent and general officer of the Gulf, Mobile and Northern whether it is your experience that the general run of passengers would know any such thing about fares?

A. No, sir, they are local passengers, people who travel frequently between points like Columbus and Montgomery, who soon get wind of it. They ride together and hear about one person doing it, and they figure it out for themselves. Then before long they know it. I started to tell you a darn good case, but you wouldn't let me.

Q. Tell me that case. .

A. You would like to hear it.

Q. Yes.

Mr. Lott: Mr. Examiner, Mr. Bruce has asked about this situation that he objected to a minute ago.

Mr. Bruce: Well, I didn't mean that.

Mr. Lott: Are you going ahead?

Mr. Bruce: I thought you meant some case in Alabama.

The Witness: No.

Mr. Bruce: My objection is based on the fact Mississippi rates are not involved here.

Mr. Reynolds: Georgia isn't either.

Mr. Bruce: I am going to ask this question now:

# By Mr. Bruce:

Q. You don't know of any like example in Alabama, do you, or do you?

A. It is theoretical, and can be practiced. We are not [fol: 1563] going to learn of it, except by accident. People are not going to tell you they are doing that.

Q. I am still going to ask you the same question: Do you know whether it is practiced, yourself personally, and

do you know of any example?

A. Only in the case I just mentioned, where we inquired of our conductor this morning. We came in on train 115, and he said to his own personal knowledge he does know, that has been done.

Q. All right. You should instruct your conductors about that.

A. We propose to do that, Mr. Bruce.

Q. You have learned something in this hearing anyhow, haven't you? Now, about your 2.2 cents fare, applying at the present time, a one-way movement in Alabama. Why have you not decreased your fare in like proportion to other lines in Alabama?

A. That is a matter of judgment. Our company did not feel that the reduction to that basis would cure our ills.

We did not feel that the loss in revenue due to that reduction would be more than offset by increased patronage. And moreover we had a competitive situation, as I believe Mr. Aiken testified over in the Mississippi Valley, and through St. Louis, to New Orleans. To have reduced our fares to that basis would have played havoc with our revenue, and we just didn't feel it was justified.

Q. It placed you in a position that if any one had com-[fol. 1564] plained about your fares it might have been

prejudice on other parts of your system?

A. No, sir, we applied it intentionally over our entire system uniformly.

Q. I mean if you had made a reduction?

A. No, sir, we did meet competitive faces, for instance, from St. Louis to Mobile, Alabama. The L&N by its circuitous route made the coach rate on the basis of 1.5 cents per mile. We met that over our direct route, and held it as a maximum until it failed to cut the 2 cents per mile.

Q. You met the situation with regard to the movement of passengers between St. Louis and points in Alabama

where you had a competitive situation, but you did not meet the situation on intrastate commerce in Alabama, is that right?

A. We had no competitive situation.

Q. In Alabama?

A. In Alabama.

Q. In other words, you would get the business whether

you had any reduced rates or not, would you?

A: Unfortunately the bus lines and the private automobiles got the business. We are just now getting a little bit of it back.

Q. You are the passenger traffic manager of the Gulf-Transport, are you not?

A. Yes.

Q. Do they propose to raise the rates between Tuscaloosa

[fol. 1565] or between other points in Alabama?

A. The Gulf Transport Company, I might add for your information, so far as the bus operation is concerned, operates only between Mobile, Alabama, and the Mississippi State line via Semmes and Wilmer, Alabama. It does not operate over any highways paralleling the rail lines over which we operate rail passenger service today in Mississippi.

Mr. Lott: You mean the State of Alabama?

The Witness: The State of Alabama.

By Mr. Bruce:

Q. Do you propose to increase your motor bus fare

between points in Alabama?

- A. We do not by this proceeding. Our general basis of bus fares between points on Gulf Transport Company's line is the rail fare, but not to exceed competitive bus fares. We try to maintain for the purpose of our interchange arrangement, under which we handle rail tickets on bases, and bus tickets on trains, we try to maintain the same basis of rates. But where we meet a competitive situation, we cut the rail basis for bus movement to competitive bus fares.
- Q. Do you have any bus fares at the present time which are lower than the rail rate that you mentioned of 2.2?
  - A. Not in the State of Alabama.
  - Q. Are the bus rates lower than the 2.2?

A. In the State of Alabama Gulf Transport's bus rates are identical with the rail rates, 2.2 cents a mile.

[fol. 1566] Q. Excepting where you meet competition?

A. We don't have any competitive situations on the buses in Alabama.

Q. Do you propose to leave these fares a present, at

the present level on the Gulf Transport?

A. We already have the 2.2 cent a mile fare on Gulf Transport one way. On round-trips we have 1.65. We have not initiated any proceedings to increase our round-trip bus fare.

Q. Therefore, these round-trip bus fares will be lower

than the round-trip rail fare?

A. There is no rail service on that line.

Q. But if there was rail service for an equal distance? For an equal distance on the Gulf, Mobile and Ohio, as far as rail is concerned, you have an existing rate you say of 2.2. What is the round trip?

A. 1.65.

Q. That applies equally to your bus operations?

A. In Alabama, yes, sir.

Q. You don't propose to raise the bus operation fares, is that right?

A. Should we be permitted to increase our rail roundtrip coach fares, we will take proper action to increase round-trip bus fares.

Q. You haven't done that yet, or you haven't consulted

your competition?

[fol. 1567] A. We don't have any competition on our bus line in Alabama, and we would act independently of other bus schedules. Regardless of whether other bus lines in Alabama made this increase or applied to this Commission to increase their fares, we would still endeavor to elevate our round-trip bus fares to the rail basis, but there are just about 27 miles involved, so it is not really worthwhile discussing.

Q. Just 27 miles?

A. We run buses all the way from Mobile to St. Louis, but up a different line of railroad. We have a line to Jackson, Tennesssee, and the bus route follows the East Line.

Q. You don't operate any rail service, rail passenger

service into Birmingham, do you?

A. No sir, we have connections into Birmingham through Meridian and Tupelo.

Q. But you do furnish freight transportation service into Birmingham?

A. We have a line by trackage agreement, and we operate freight service into Birmingham proper up through Cor-

inth, Mississippi.

Q. Have you ever received any complaint from any one in the State of Mississippi or any other States with reference to the existing coach fares in the State of Alabama, between points in Alabama?

A. Well, we have not to my knowledge, but in normal [fol. 1568] times we certainly would be getting a lot of them, People just haven't got time to worry about them now.

Q. But you have not received any complaints?

A. No sir.

Mr. Bruce: That is all I have. Thank you.

Examiner Stiles: Mr. Geil, referring to the testimony you gave with reference to what the conductor told you coming in this morning, you said in answer to a question by Mr. Bruce that you were going to instruct your trainmen. What could you do in that case? Is there anything you can do?

The Witnesse Yes sir.

Examiner Stiles: Can you tell them you refuse to accept the ticket that the passenger has bought after he has

stopped at the intermediate points?

The Witness: Yes sir. I contemplate issuing instructions to that conductor that if he can identify that passenger as having come in on that train, to require him to pay the full interstate fare from a point that he boarded the train to his destination, otherwise to put him off the train, and I think we can do it.

Mr. Lott: Off the record.

. (Discussion had off the record.)

The Witness: We will at least make a conscientious effort to police it and stop it. We haven't got so much business at Tuscalo sa that we cannot in a measure identify or [fol. 1569] segregate those passengers. The conductor evidently has not done anything about it because he has not been instructed, and he probably didn't even know himself that it was unlawful, but we do propose to do something about it. Mr. Lott says maybe I contemplate going too far, but I personally feel that we can do it. If we know he is in

continuous interstate commerce, I don't see how we would be justified in doing other than to require him to pay the fare.

Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: Do you have another witness?

Mr. Oliver: The railroads have two more witnesses, an operating witness and an accounting and statistical witness. What is your pleasure about the adjournment hour?

Mr. Bruce: I have a lot of questions to ask both these

witnesses.

Examiner Stiles: I didn't hear you?

Mr. Bruce: I say I am much in favor of adjourning.

Examiner Stiles: Off the record.

(Discussion was had off the record.)

Examiner Stiles: We will adjourn until 9:30 tomorrow morning.

(At 5:15 o'clock, p. m., June 28, 1943, a recess was taken until 9:30 o'clock, a. m., June 29, 1943.)

[fol. 1570] Offices of Alabama Public Service Commission, Montgomery, Alabama

Tuesday, June 29, 1943

Before C. E. Stiles, trial Examiner.

Hearing resumed at 9:30 a.m.

Appearances: As heretofore noted.

#### **Proceedings**

. Examiner Stiles: Let's come to order. Carriers may call their next witness.

Mr. Oliver: Come around, Mr. Simpson.

· Walter W. Simpson was sworn and testified as follows:

Direct examination.

## By Mr. Oliver:

Q. State your name, residence and occupation?

A. Walter W. Simpson, 4009 8th Court South, Birmingham, Alabama, Superintendent, Southern Railway, Birmingham Division.

Q. How long have you held your present position, and what position's have you previously held in the operating department of the Southern Railway System Lines?

A. I became superintendent of the Birmingham Division on February 22, 1942. Since entering the service in Feb-[fol. 1571] ruary, 1914, I have served as clerk, thief claim dispatcher, inspector of transportation, terminal trainmaster, trainmaster and division superintendent of two divisions prior to Birmingham.

Q. One of those other divisions is in Alabama?

A. The Mobile Division, yes, sir,

Q. Over what lines do you now have immediate supervision?

A. From Austell, Georgia, to Columbus, Mississippi, and from Parrish, Alabama, to Sheffield, Alabama, and also the terminals in Birmingham.

Q. Now, the line that you speak of from Austell to Columbus crosses the state of Alabama, doesn't it?

A. Yes, about in the vicinity of Tallapoosa.

Q. What other lines do Southern Railway Systems operate in the state of Alabama?

A. The Alabama Great Southern.

Q. Well, now, what is the line of the Alabama Great Southern?

A. The line of the Alabama Great Southern extends from Chattanooga to Meridian.

Q. Through Birmingham?

A. Through Birmingham, yes, sir.

Q. Now, then, what other lines besides the Alabama Great Southern and the lines over which you have jurisdiction are operated by the Southern Railway Company in the state of Alabama?

A. The Memphis Division extending from Chattanooga [fol. 1572] to Memphis has a mileage in the state of Alabama, and then there is a line from Attalla to Rome that is operated by the Atlanta Division. That has mileage in Alabama. And the Mobile Division is practically all in Alabama, except for a short distance.

Q. When you speak of the Mobile Division, just what is that?

A. The Mobile Division extends from Birmingham to Mobile, and they have a line from Selma to Rome, Georgia, one from Selma to Akron, and one from Selma to York.

Q. Then there is a line, isn't there that comes in from Meridian, across through York?

A. I included that in the Selma to York line.

Q. That is included?

A. That connects with the Alabama Great Southern at York.

Q. Approximately how much mileage does Southern Railway Company and the Alabama Great Southern operate within the state of Alabama?

A. The Southern Railway Company operates 1,065 miles, and the Alabama Great Southern operates 261 miles; there are 1326 miles of the system in the State of Alabama, total.

Q. Are Southern Railway, or Southern Railway System Lines I should say, and the other Alabama lines confronted with any unusual difficulties and expenses in connection with passenger operations under present day conditions?

A., Yes.

[fol. 1573] Examiner Stiles: The Southern System operates, I take it, more miles of railroad in Alabama than any other area?

The Witness: That is true.

Examiner Stiles: Would the L. & N. be next?

The Witness: Sir?

Examiner Stiles: Would the L. & N. be next?

The Witness: I would say that the L. & N. would come next.

Mr. Oliver: We will give you those mileages, Mr. Examiner, by a later witness who has them for each Alabama line.

Examiner Stiles: Thank you.

Mr. Oliver: He has them accurately.

By Mr. Oliver:

- Q. Now, you say that the roads are confronted with difficulties and additional expenses under present day operating conditions?
  - A. Yes, sir.

Q. Will you amplify that answer; please, sir?

A. Well, the heavy increase in civilian travel has made it necessary to operate trains in sections, that formerly we did not have to operate, and we have had to increase our train forces. We have had to put on practically all of our trains a helper to the conductor, to help lift the transportation.

We have had to put additional train employees on trains to help load and unload the passengers.

We have in lots of cases more than doubled our forces in the ticket offices, and we have to split our train dis-[fol. 1574] patching districts on account of the increased number of trains operated. The train dispatchers were not able to cover the whole territory that they had been covering. We had to put on extra sets of train dispatchers to split the territory up so that they could properly handle the train movements.

The beavy drain on the equipment of course requires the doubling of equipment back, and necessarily there is an unusual amount of switching in the yards in connection with it. Formerly the train would come in and lay over until the next day when it went out again. We have to grab that equipment and send it all ways now, and just figure on something coming in later to take the train out next day. That increases your terminal expense.

- Q. Now, you spoke of operating trains in two sections. Is it more expensive per train to operate in two sections than it would be just to operate one train?
- A. Well, that goes to make up more train upits, of course, on your division, and naturally the more unit-you have, why, the more delays you are going to have to opposing trains.
- Q. Do you have a limit as to the number of cars operated in a passenger train?
- A. Well, there is always a limit to the capacity of the locomotive that might be assigned to it, and when you get over that limit, why, you have to make other arrangements,
- Q. Now, suppose you had a train that normally operated, [fol. 1575] say, with 12 to 14 cars, and you put on four additional cars. Would you operate an additional section by reason of that?
- A. You would have fo. On my particuluar division between Birmingham and Atlanta, where we have our heaviest train operation, if we have over 14 cars we doublehead and over 16 we make two sections. If we have 17 cars we split it up.

1:15

O. Then if you operate 17 cars in two sections, that would naturally increase your unit cost per car, would it not?

A. That is right.

Q. You would have two full crews for each-I mean a full crew for each train?

A. That's right.

Q. Now, you have been dealing, I take it, primarily or entirely in your answers with the normal or the civilian business, so to speak?

A. Yes.

Q. Do you encounter any unusual difficulties in han-

dling troop movements?.

A. Yes, we do. There is always more or less additional miles that has to be made in order to get your equipment in place and get it disposed of after it has served its use as troop frains, and the troop trains, of course, have to be given more or less preference over other movements.

Q. Are you speaking of deadhead movements now when you speak of assembling and getting the cars back? [fol. 1576] A. Well, yes, deadhead movements, on which there is no revenue involved, but to the contrary we use foreign equipment lots of times, and have to naturally pay mileage on the foreign equipment.

Then the troop train has to necessarily be given preference over other train movements, causing additional overtime delay on line of road, and more coal consumption.

And we have had on the Birmingham Division to lease engines from other lines, and we have got ten Chicago & Northwestern engines leased from them. The A. G. S. Railroad has seven Erie engines that they just recently bought, and they have one from the T. A. G. Railroad leased at Chattanooga, in order to handle this excess business. You can't get locomotives from the builders at the present time, and we have to get second hand engines from other lines.

Q. Does the handling of troop trains through the terminal interfere with your normal terminal operations?

A. It does. Of course that is just another train movement. All of our terminals are congested to a large extent, due to the heavy increase in business. The facilities were not planned and built for such heavy abnormal business, and naturally it is causing delays to the other movements.

We have to ice and water all of them, which takes a lot of time.

Q. Does the question of overtime enter into it? [fol. 1577] A. It does, of course, to a large extent. We have to pay overtime on our—we make quite a bit of overtime in our yard. Lots of times you have to hold engines on to take care of troop movements coming in. Ordinarily there is no scheduled train, particularly in your passenger yards, there is no schedule due in, and the troop movements are coming through, and that is the time you have to have additional switch engines to take care of them.

Q. Are all of the costs incident to the troop train movements chargeable to passenger operations, or does some of it go into your freight account?

A. Some of it goes into our freight.

Q. Will you give an example of what you have in mind in that connection?

A. Well, we use freight engines on quite a number of them that we have to, necessarily, on account of the heavy trains. They handle more cars and have more cars than our passenger engines will handle, and we use freight engines on them. The repairing of those locomotives is of course charged to freight expenses.

Q. Your train crews, though, that are assigned, or your engine crews, that goes into the freight account, doesn't it?

A. Yes, that goes, on a large number of them, I would-say particularly the mixed trains where they have freight cars and passenger cars, as lots of them do, the crews [fol. 1578] would get freight pay. That is one of the provisions of their agreement.

Q. Now, aren't troop trains given expedited movement over your lines of road?

A. They are.

Q. Does that mean a delay to freight trains en route?

A. Necessarily.

Q: Does that result in overtime or do you know?

A. It does result in overtime.

Q. To the freight crew?

A. Yes.

Q. Is that overtime charged to passenger or freight expense!

A. To freight.

Q. From the standpoint of passenger train operations, is there any difference between the service which passengers traveling in interstate commerce receive from that which is given intrastate passengers in Alabama?

A. There is no difference whatever.

Q. Now, Mr. Simpson, I am going to ask you to describe as briefly as you can the passenger service which is offered by Southern Railway Company and the Alabama Great Southern to its patrons in the state of Alabama?

A. Well, on our line from Atlanta to Birmingham we operate trains 7 and 8, 39 and 40, and 11 and 12 regularly. 1 would say 85 percent of the time, numbers 39 and 40, [fol. 1579] and 7 and 8 are operated in two or more sections. That particular line has 105 miles of railroad in the state of Alabama.

Q. How many stops do those trains make within the state?

A. Well, they stop at all of the principal points. Here is—

Q. Take 7 and 8, for instance?

A. No. 7 stops at—its first stop in the state is Heflin, and then Anniston and Pell City and Birmingham. No. 8 stops at Pell City, Anniston and Heflin.

No. 39 stops at Heflin, Anniston, Lincoln, Pell City and Birmingham. No. 40 stops at Pell City, Anniston and Heflin.

Now, in addition to that, we have 11 and 12 that could make all of the stops.

Q. Now, what about your streamline trains, numbers 47 and 48?

A. 47 and 48 stop at Anniston on the Birmingham Division, and of course Birmingham and Tuscaloosa on the Alabama Great Southern.

Q. Will you tell us about the equipment on these trains, particularly as to the coaches, as to whether or not they are air conditioned?

A. Of course 47 and 48 have five coaches, all air conditioned. That is a solid air conditioned train, a dining car and a buffet coach. Numbers 7 and 8 carry three AC coaches and two NAC coaches.

Q. When you say "AC" coaches, you mean what? [fol. 1580] A. Air conditioned.

Q. Air conditioned?

A. Yes.

Q. "NAC" is not air conditioned?

A. Non-air conditioned. No. 39 and 40 carry two AC coaches and two NAC coaches.

Numbers 11 and 12 carry one straight AC coach, and one standard NAC coach.

Q. All right, what is your next line?

A. The next line extends between Chattanooga and Memphis. It is 144 miles of line within the state of Alabama. They have trains numbers 45 and 46, which are known as the Tennessean, and of course that is an all air conditioned train.

They have numbers 35 and 36 that operate between Chattanooga and Memphis, and numbers 7 and 8 that operate between Sheffield and Chattanooga.

Our numbers 45 and 46 stop, 45 stops at Scottsboro, Huntsville, Decatur, Sheffield and Tuscumbia. No. 46 in the opposite direction stops at Tuscumbia, Sheffield, Decatur, Huntsville and Scottsboro and Stevenson,

Numbers 7 and 8 between Sheffield and Chattanooga make all of the stops in Alabama. Also numbers 35 and 36 make all of them.

Number 7 and 8 is a Diesel air conditioned train. It carries only one coach, however, and because of the travel, [fol. 1581] additional equipment is not required.

35 and 36 carry two standard air conditioned coaches and one NAC coach. You didn't want the Pullman equipment on these trains, did you?

Q. Well, I think you might state whether they have Pullman equipment or not.

A. Yes, 35 and 36 carry one Pullman car. 45 and 46 have four air conditioned coach cars and one buffet coach, a dining car and three Pullman cars. That is a streamline train with individual reclining seats.

Another line of the Southern Railway is the A. G. S. operating between Chattanooga and Birmingham. 234 miles of that line are within the state of Alabama. They have trains 41 and 42 between Chattanooga and New Orleans, and numbers 17 and 18 between Chattanooga and Birmingham, and of course No. 47 and 48, which is the Southerner that operates over the Birmingham Division from Meridian to New Orleans also.

Q. Now, will you tell us about the equipment on trains 17 and 18 and 41 and 42, and the stops made by those trains in Alabama !

A. I didn't name 42 and 43 that also operate between

Cincinnati and New Orleans.

Q. You mean 43 and 44, don't you?

A. 43 and 44, I mean.

Mr. Bruce: 43 and 44?

[fol. 1582] Mr. Oliver: Yes, 43 and 44.

The Witness: Now, numbers 43 and 44 make practically all of the stops in Alabama.

## By Mr. Oliver:

Q. What is the equipment on those trains? You haven't given it, I don't think.

A. Their equipment consists of three AC coaches, one NAC coach, one Pullman car. That is a Pullman-buffet

car.

41 and 42, I will take 41 first, their first stop in Alabama is Valley Head, then Fort Payne, Collinsville, Attalla, Springville, Birmingham, Bessemer, Tuscaloosa, Akron, Eutaw, Livingston and York.

No. 42 in the opposite direction makes those same stops.

Q. What is the coach equipment on those two trains?

A. 41 carried a combined passenger and baggage car, two air conditioned coaches, individual seats and reclining chairs, two standard coaches, and five Pullman cars.

Numbers 17 and 18, take 17, it stops at Fort Payne, next Attalla, and Birmingham. No. 18 makes the same stops. Number 17's equipment is one combined passenger and baggage car, two air conditioned coaches, individual reclining seats, two standard coaches and two Pullman cars.

Q. Does train number 18 carry the same equipment?

A. The same equipment, both 17 and 18.

We have another line from Birmingham to Columbus, Mississippi, 112 miles of which is in the state of Alabama. [fol. 1583] We operate on that line a Diesel train, which is of course air conditioned and carries one coach. They make all of the stops within the state.

Q. Now, how much of the mileage between Birmingham

and Columbus is outside of the state of Alabama?

A. Just 12 miles of it. We have another line from Sheffield to Parrish, all of which is in Alabama, consisting of 95 miles. That is a Diesel air conditioned train and carries one coach.

I might add on these Diesel trains that we have to add an additional coach on week ends, Friday, Saturday and Sunday, which is usually a non-air conditioned car.

We have another line from Rome to Attalla, 41 miles of which is in the state of Alabama, and we operate a mixed train in there, in each direction, known as 115 and 116. They carry one coach for passenger travel.

Q. That is not air conditioned, I take it.?

A. That is not air conditioned, no. We have another line from Rome to Selma, 196 miles, with about 25 miles of that being in Georgia. The rest of it is in the state of Alabama. And we operate a mixed train in there known as 15 and 16, running each way a day. They carry a combined car for baggage and express and passengers, and a straight coach for passengers. That is non-air conditioned equipment. We have another line from Selma to Akron, [fol. 1584] a total of 65 miles, all within the state of Alabama. We operate a mixed train on that, in each direction, known as 17 and 18. They handle one coach, non-air conditioned.

Q. Did you cover your line from Selma to Demopolis?

A. We have a line from Selma to Demopolis. It is 51 miles, roughly, and we operate a mixed train in each direction over there, known as 115 and 116. They handle one coach.

What about the line from Selma to Marion Junction?

A. We have a line from Selma to Akron, I reckon you mean. I covered that, didn't I?

Q. Yes.

A. That Selma to Marion Junction line is served by this one going to Demopolis and Akron.

Q. All right.

A. We have a line from York to McDowell, which is 22 miles in length, and that is served by a mixed train in each direction, numbers 11 and 12. They carry one coach.

Q. All of that mileage is in Alabama?

A. Yes. Now, another line in our Birmingham-Mobile line, which is 264 miles and is served by a Diesel air conditioned train. They carry one air conditioned coach regularly, and two on week-ends, Friday, Saturday and Sunday. They make all of the stops.

Q. Now, Mr. Simpson, do these trains that you have described all handle both intrastate and interstate pas[fol. 1585] sengers indiscriminately?

A. They do.

Q. Mr. Simpson, you have been an operating officer for a long number of years. Can you tell us whether the operating conditions in Alabama are similar to those in Georgia and Mississippi and other states in which your lines operate, the Southern Railway Company?

A I don't know of any differences that I could point on in operations at all. I imagine that the same operat-

ing conditions exist over there that exist here.

Q. Now, you have operated in Mississippi. Is there any difference in operating conditions in Alabama, as compared with those in Mississippi?

A. No, I don't think so.

Q. Are you familiar generally with the operation of the other railroads in the state of Alabama, and I mean by "other railroads other than your own lines, and can you say whether or not the operations or operating difficulties that you encounter under present conditions are the same as those encountered by the other railroads in Alabama?

A. Well, I sometimes make trips over other lines. I came down here on the L. & N. this time and frequently have occasion to ride the other railroads, and they seem to have about the same conditions that we have, of heavy traffic movements, and the same conditions similar to the travel, more or less.

[fol. 1586] Mr. Oliver; That is all from this witness.

Examiner Stiles: Mr. Oliver, I am interested in this matter of passenger troop train operations being charged to freight expenses. Will your other witnesses have any statistics on that?

Mr. Oliver: I am afraid not, Mr. Examiner. It is a matter that is hard to—you know the expense is there, but it is difficult to figure it out in dollars and cents.

Examiner Stiles: Then I will ask this witness do you have any information as to the volume of expense in connection with the troop train operations which is charged to freight expenses?

The Witness: No, we don't keep any division of that. Examiner Stiles: Is it considerable, or are you in position to say? The Witness: I would say it is—due to the fact we have a lot of mixed trains, it is a right smart.

Examiner Stiles: You may examine the witness.

Cross examination.

## By Mr. Bruce:

Q. Mr. Simpson, when you testified before the Alabama Commission in a hearing, I think in December, or was it November?

Mr. Oliver: November.

#### By Mr. Bruce:

Q. Did you place in the record the number of military trains that your line had handled?

[fol. 1587] A. I believe I did.

Q. Did it run into the hundreds per month?

A. As I recall—

Q Several hundred?

A. I don't recall the figures now.

Examiner Stiles: Will you read that question to me?

(The record was read.) .

Mr. Oliver: I believe that testimony was put into the record by Mr. Barry who testified as a passenger traffic witness, and not by Mr. Simpson.

Mr. Bruce: Well, the Southern.

Mr. Oliver: We did put it in, and we also put in the number through Mr. Aiken in this hearing for the months of April and May, 1943.

The Witness: I don't recall definitely. The record will show whether I put it in or not, but I don't recall. Ordinarily we would not have that except on our immediate division, and no doubt Mr. Barry did put it in.

## By Mr. Bruce:

Q. These terminal delays that you are talking about, how do they occur, at your terminals, we will say at Montgomery?

A. Well, I couldn't speak for Montgomery.

Q. Well, we will take your own territory then, Birmingham.

[fol. 1588] A. Well it interferes with, or naturally stops freight work on other trains to handle troop trains, and

it results in delay to those trains.

If you have tracks occupied by troop trains and other trains might have to be held out of the yard until those troop trains leave, then that is necessary to be done so he can get an open track to come into.

Examiner Stiles: It is difficult for me to hear you.

The Witness: I say we frequently have— Examiner Stiles: You need not repeat that.

The Witness: All right, sir.

Mr. Oliver: Have you completed your answer? I didn't know whether he completed his answer or not.

The Witness: I had completed it.

By Mr. Bruce:

Q. Are troop trains longer than ordinary passenger trains?

A. They are.

Q. Are they brought in passenger stations as a rule for the accommodation of soldiers?

A. They have to be for icing and watering, we don't have facilities in freight yards to ice and water passenger equipment.

Q. That would be true also of inspection of the trains, wouldn't it, that would be done at the passenger station?

A. That is right.

[fol. 1589] Q. And oiling and general care of the trainwould be done at the passenger station there?

A. That is right.

Q. How long are these troops trains ordinarily, how many cars?

A. Well, they will run anywhere from 10 to 25 cars.

Q. Would a 25 car train block your leads into your stations from your main lines at your ordinary terminal?

A. It would at the ordinary passenger terminal.

Q. Would, it block your leads at Birmingham?

A. Our largest track in the Birmingham terminal will hold 21 cars and two engines.

- Q. Therefore a 25-car train, would block all leads?
- A. It would not block all leads.
- Q. Well, the most of them.
- A. The adjoining track leads.
- Q. That would render these adjoining tracks unusable until that train had gone out of that station?
  - A. That is right.
- Q. Would that also influence terminal delays there in regard to your freight movement?
- A. Not necessarily. But it would in some cases, for instance, movements out of what we call the 27th Street Yard at Birmingham, it would cause delays in connection with the movements out of there. We have three yards in Birmingham, and it would not affect the other two, of course.
- [fol. 1590] Q. Now, do troop trains ordinarily have also property cars with them, freight cars, such as gondolas and flat cars, and what not on which is loaded equipment?
  - A. They frequently do.
- Q. Do these cars move in the same train that the passengers move in?
- A. They move in the same train. At Birmingham we take the whole train to the freight yard when they are mixed, and cut the passenger cars off with a switch engine and take them to the passenger terminal.
- Q. You would have to switch from the yards to the passenger station to handle the passenger cars, would you not?
  - A. That is right.
- Q. How do you assemble your equipment for these troop
- A. We assemble it from all over the railroad, wherever we can get it, at one point, and have it at the most convenient point, depending on the movement for which it is intended. We have it conditioned, iced and watered and supplied with drinking cups, toilet paper and cleaned.
- Q. And then is that, after the assembly of this equipment, is it then moved on a train to the point where it will load the troops?
  - A. Yes, it is.
- Q. In assembly and in moving a train to the point where troops are to be loaded, that is an empty car movement, is it not?

[fol. 1591] A. That is right.

Q. Then after you have delivered the troops to their destination, you have the same operation, you have to take the trains back, and then distribute the equipment again?

A. It depends on where your next movement is from.

You might need it somewhere else.

Q. I am speaking about under ordinary conditions.

A. If we had no other movement booked, it would prob-

ably go back to where it came from,

Q. Therefore, you would have two empty car movements, with one loaded movement under ordinary conditions, would you not?

A. I wouldn't say "ordinary conditions", because that equipment is used continuously, and before we get through with one movement, we usually know where the next movement is going to be.

Q. But you would have the next movement to wherever

the next movement would be?

A. Yes.

Q. And that would be empty?

A. That would be empty, yes.

Q. Are camps on the Southern located on your main

line? We will take Camp McClellan?

A. That is on the main line, Fort McClellan is on the main line of both the Mobile Division and the Atlanta Division.

Q. How far is that located from your main line, the spur,

[fol. 1592] what is the length of the spur?

A. It is about eight miles from the Birmingham Division to Fort McClellan. You get there by using the Mobile Division main line.

Q. Do you use a switch engine to serve McClellan from the main line over your spur into Fort McClellan?

A. Yes.

Q. You use that switch engine twice, do you not, that is two trips, first you spot the cars at Fort McClellan, and after they are loaded you have to go in there and get them?

A. That is right.

Q. Therefore you would have two trips of eight miles, which would be 16 miles, in other words, 32 miles that you would consume in loading troops there and bringing them to the main line and placing equipment, is that right?

A. That would be 32 engine miles, yes, sir.

Q. I mean engine miles?

A. Yes, sir.

Q. You are not familiar, you state with the conditions here in Montgomery?

A. No, I am not very familiar with those.

Q. You don't know how you would serve Gunter Field or Maxwell Field, do you?

A. No, I don't know that.

Q. Would you have an opinion about how these two [fol. 1593] fields are served in regards to troop movements?

A. No, I wouldn't have any opinion about it.

Q. You wouldn't know anything about the troop movement over the L&N, or the Illinois Central?

A. No.

Q. Or the Frisco?

A. No.

Q. The Atlantic Coast Line?

A. No.

Q. Would you care to state an opinion about whether their troop movement is light, as an operating man?

A. Well, I wouldn't state other than this, the Illineis Central operates over our line between Haleyville and Jasper, and they handle on an average of about three troop trains a day. That is as far as I can go with it.

Q. From what you state there, terminal delays and method of handling troops from the camp to the main lines of the other railroads would be about the same as yours?

A. I wouldn't know.

Q. You stated that you knew about operating conditions over certain lines that you traveled over in Alabama, but you wouldn't know about the troop movement?

A. I wouldn't have any information—I don't mean by that I would have intimate knowledge of it.

Q. What other camps do you have on the Southern in Alabama?

[fol. 1594] A. We have Camp Sibert up at Attalla.

Q. How far is that from your main line? .

A. That is right on the main line.

Q. Just an ordinary switch?

A. Yes.

Q. What others do you have on your lines in Alabama,

Mr. Simpson?

A. I don't believe we have any other camps on the Southern Railway in Alabama. There is one at Mobile, but that is not on the—I believe the L&N serves that if I am not mistaken.

Q. You transport troops from Mobile, do you not, over the Southern?

A. No, we haven't—I don't know of any troop movements moving from Mobile.

Q. Do you have any troop movements of Craig Field at Selma?

A. No, I don't know of any special train movement other

than on regular trains.

- Q. Of course you know about the increased expenses of the Southern, you stated that you had increased expenses?
  - A. I do. I haven't the figures with me, but-

Q. You know there are increased expenses?

A. Sure.

Q. I want to ask you this question, if you didn't have any military movement whatsoever at the present time, would you have sufficient engine equipment and passenger train [fol. 1595] equipment to handle civilian travel?

A. Not—we have it with what we have got now, but we wouldn't have it had we not acquired this other power that

I speak of.

Q. With the acquirement of your additional new equipment that you have acquired, would you have sufficient equipment?

A. Yes.

\*Q. I want to ask you this, did you operate one extra train in Alabama since January 1, 1942, to handle exclusively civilian passengers?

A. I don't think you would find a train operating anywhere in the United States now that had exclusively civilian

passengers on it, you would find soldiers on it.

Q. In other words, you haven't had any since January 1, 19427

A. All trains have military personnel on them at the present time. I have never seen one that didn't have.

Q. Now, have you made any observation in regard to that, military travel and the civilian passenger travel on your trains, Mr. Simpson?

A. No, I have not prepared any figures on that.

Q. What would be your opinion, how would it be divided

in percentage, on your regular passenger trains?

A. Well, sometimes you find a good many more civilians than you find soldiers, and other times you find more soldiers than you do civilians.

Q. These extra sections that you stated that you operated [fol. 1596] on your regular trains, that is on the same numbers that you operate your regular trains. What are these, through trains altogether?

A. No, they are extra sections of regular trains, due to the overflow travel, both civilian and troops combined.

Q. Might there be cars on some of these trains that would be loaded with soldiers entirely, a car movement?

A. I- could be, but not necessarily.

Q. Now, you stated that if you had four extra ears, that is over your regular complement that you ordinarily handled on one of your passenger trains, that that would necessitate an extra section, is that right?

A. If we had one additional car above the capacity of the locomotive, why we would have to run another section. We of course would not run it with one car, but we would divide the train up in equal portions for operating convenience.

Q. Wouldn't you doublehead that train instead?

A. We would doublehead to a certain limit.

Q. What is that limit?

A Well, according to the grades and according to the size of your engine, but I mentioned the Birmingham Division there, that 16 was our limit in our train.

Q. Then your regular trains have not been increased in any way, that is, the number has not been increased in any way whatsoever since January 1, 1942, to the present date, [fol. 1597] have they, the regular scheduled trains?

A. Yes, they have put on additional trains on the Alabama Great Southern for the handling of mail and express, to relieve the regular trains, passenger trains of this work, so that they could handle more passengers and passenger cars.

Q. These would be second sections of your regular train, would hev not?

A. No, they are regular scheduled trains.

Q. Regular scheduled trains?

A. 3 and 4, and 5 and 6 operate between Chattanooga and New Orleans. Their primary purpose of putting them on was to handle mail, express and baggage to relieve the regular trains so they could handle more passenger carrying cars.

Examiner Stiles: Do they handle any passengers?
The Witness: Only in case of missed connection. If the regular train, preceding train, should miss a connection, they would pick it up, but that is about the only condition under which they handle passengers.

### By Mr. Bruce:

Q. Now, you stated that you had split your dispatcher divisions, is that right?

A. That is right.

Q. Is that necessitated from the fact you had heavy troop movements, that is extra trains?

A. Not entirely. It is coupled with the other heavy move-

ments.

[fol. 1598] Q. I want to ask you the same question again about if you didn't have any military movement at all, if you had only these trains operated today to handle passengers and mail and express exclusively, would you have had to split your dispatcher business?

A. Well, we hadn't split it until the war started, of course. If we hadn't had any war, it would still have been done that way, but there is a whole lot of civilian travel that has been brought about by the war effort, as well as the troop move-

ment.

Q. Now, as to general office employees, I mean on your division, would that be true, would the same be true, would the ordinary force, could you handle your ordinary business, I mean not taking into consideration troop movements?

A. Well, I wouldn't say that they could, because we went into this thing with a depression organization. They couldn't handle even the civilian travel that we are handling

now without additional help.

Q. Then that was occasioned by the fact that you were on a skeleton crew, then, you didn't have very much business at the start of the war?

A. I think it is generally known that we had a depression

from 1930 to 1935.

Q. Are you familiar with the troop movement out of Camp Rucker?

[fol. 1599] A. No, I am not.

Q. And the same would apply to any other camp that I have not named that is located in Alabama?

A. No, I would not be familiar with any off of my line.

Q. What is the first point in Alabama that a passenger could stop off at and buy a ticket enroute from Cincinnati to New Orleans southbound?

A. Well, at Attalla I would say would be the first point that he would have time to go in the station and buy a ticket.

Q. He couldn't stop at Valley Head, could he?

A. He would not have time to stop there.

Q. Does the average small station at the border points have a ticket agent at night?

A. Attalla has.

Q. No, but I mean Valley Head and points like that.

A. Well, it depends on whether it is a day and night telegraph office. Valley Head would have, because it is a continuous office.

Q. Does it have a telegraph operator, and does he sell tickets!

A. That is right.

Q. What trains stop at Valley Head?

A. Numbers 43 and 44, and 41 and 42.

Q. How long do they stop there?

A. Long enough to do whatever station work they have to do, ufload passengers and mail, baggage, and express.

[fol. 1600] Q. Would that man on duty on night shift have

[fol. 1600] Q. Would that man on duty on night shift have to help unload mail and secure it after it is unloaded, and express?

A. He would.

Q. Therefore there would be no one in the passenger

station, I mean in the ticket office.

A. If you will recall I told you that he would not have time to buy a ticket at Valley Head, if that is what you are leading up to, I told you that in the beginning.

Q. I am just elaborating on it.

A. Yes.

Q. Now, coming in from New Orleans to Mobile, the same train, what would be the first point you would hit in Alahama!

A. Tuscaloosa.

Q. Tuscaloosa, that would be the first point that a man would buy a ticket at, wouldn't it?

A. Yes.

Q. And would the same apply from Meridian?

A. Coming north?
Q. Coming north.

A. I would think Tuscaloosa would be the first point he would have an opportunity to get off and buy a ticket.

Q. How far is Tuscaloosa from the Alabama-Mississippi

line, approximately, Mr. Simpson?

- A. That is 616, and Tuscaloosa is 536; that would be about 76 miles.
- Q. Now, what would be the first point that a man could [fol. 1601] buy a ticket traveling east from Memphis in Alabama?
  - A. I would say it would be Sheffield.

Q. Is Sheffield a telegraph station?

A. Yes, sir.

Q. And would the same explanation apply at Sheffield as applied at Valley Head, there would be one man on duty there?

A. No, Sheffield has a continuous ticket service.

Q. Do you know how long your trains stop there, do they stop just long enough to do their work?

A. They do their station work and change engines and

have an inspection.

- Q. You operate a train from Demopolis into Marion. Junction, do you not, a mixed train?
  - A. Demopolis into Selma.

Q. Into Selma!

A. Yes.

Q. And that train continues from Selma on to what point?

A. It doesn't-it terminates there.

Q. I mean the cars on that train that have passengers on them?

A. They don't continue beyond Selma.

Q. How do they get out of Selma?

A. They go back to Demopolis the next day. They make a round trip a day between Selma and Demopolis.

Q. What if they were destined beyond Selma, what if they were going in interstate commerce?

[fol. 1602] A. There wouldn't be any cars in that train that—any passenger cars that would be going in interstate commerce.

Q. Therefore they would have to change trains there?

A. They would have to change trains there, yes.

Q. On your streamliners, I don't know whether you know that or not, and if you don't, I will withdraw my question, but are these people on the streamliners, in the coaches, all assigned on reservations, Mr. Simpson?

A. They are.

- Q. Therefore a man cannot travel on these streamliners unless he has a seat space, is that right?
- A. Well, that is oftentimes assigned at the frain by the passenger representative who is on the train.
- . Q. Might he permit someone to stand if there are not sufficient seats?
- A. No, he doesn't take on any beyond the seating capacity. Of course he does fill the seats in the observation car.
  - Q. That would require a first class ticket, of course?

A. Yes.

Q. That would not be a coach ticket?

- A. Oh, yes, it is a coach ticket, it would not require a . first class ticket.
- Q. You mean to buy a seat in the reservation, in the observation car?

A. That is right, that is an all coach train.

Mr. Bruce: Is that correct? Can you ride in the observa-[fol. 1603] tion car attached to that train?

Mr. Aiken: The observation car is put on for the benefit of all seat passengers. Anybody and everybody can occupy it. Sometimes the passenger agent on the train, when he has an extra load get on, will permit them to ride in the observation car, and sometimes even in the dining car in order to accommodate the passengers.

Mr. Bruce: That is only in case though where there are

no seats available?

Mr. Aiken: That is correct, that is correct.

### By Mr. Bruce:

- Q. Mr. Simpson, I am going to ask you this, if a passenger bought a ticket from Cincinnati to Birmingham on a streamliner, on the Cincinnati train—
  - A. We have no streamliner that operates on that route.

Q. You have a limited train, though?

A. Well, I wouldn't say it is a limited train. We have 43 and 44 that operates from Cincinnati to New Orleans.

Q. Where does the streamliner operate?

A. The streamliner operates between Washington and Memphis, and between New York and New Orleans. The Memphis route, of course goes through Chattanooga and the New Orleans route tomes down through Atlanta to. Birmingham.

Examiner Stiles: I can't hear you.

The Witness: I say the Memphis route operates through Chattanooga and the New Orleans route operates through [fol. 1604] Atlanta and Birmingham.

### By Mr. Bruce:

Q. We will take Washington as an example. If a man bought a ticket in the coaches on a streamliner at Washington to Birmingham, and then attempted to buy another ticket from Birmingham to some other point in Alabama, Mobile we will say, en route to New Orleans, do you think he would have any chance of getting a reservation out of Birmingham that is a seat reservation?

A. Well, now if he was going to New Orleans, of course

he wouldn't-

Q. Break his trip so that he could defeat interstate commerce?

- A. Oh, yes, he would have an opportunity if he wanted to break his trip to Birmingham on the streamliner, he would have an opportunity of getting a reservation from Birmingham to New Orleans.
  - Q. You mean on the same train?

• A. Well, he would not have any occasion—I thought he was going to break his trip.

Q. He is breaking his trip up this way, by buying, as explained by numerous witnesses yesterday, he could buy a ticket, and then hop off the train, and then buy another ticket between two points in Alabama, another ticket from another point in Alabama to his final destination in interstate commerce, to avoid the interstate fares?

A. He couldn't defeat the interstate fare there, because [fol. 1605] it would still be an interstate movement from Birmingham to New Orleans.

Q. No, I mean he would buy a ticket from Washington, D. C., to Birmingham, then he would attempt to get another ticket on the same train from Birmingham to Mobile.

Mr. Oliver: The train doesn't go through Mobile.

Mr. Bruce: Well, wherever it goes to, say the border, the first point, that would be Tuscaloosa, would it?

The Witness: Yes.

#### By Mr. Bruce:

Q. Buy another ticket to Tuscaloosa; do you think he would stand any chance of getting a seat which he would have to ride on that train between Birmingham and Tuscaloosa, on the same train that he came in on?

A. Well, I can answer that by an example. I think it was last Thursday, I met the train in Birmingham and got seats for four friends of mine that just showed up at train time,

and there were ample seats on there for them.

Q. Oh, you as the superintendent naturally would get reservations above an ordinary traveler, wouldn't you.

A. No, no, the space was on the diagram.

Q. Give me your opinion as to whether or not the man could get a seat on the same train coming from Washington, D. C., through Birmingham on and from Birmingham to Tuscaloosa!

A. I think he could.

Q. Laber ordinary conditions? [fol. 1606] A. To Tuscaloosa I think so, because there would be of course a lot of passengers who would get off at Birmingham and then he could use Meridian space for Tuscaloosa passengers, and Tuscaloosa passengers, passengers that would get off at—passengers that might get on at Tuscaloosa, he could use that space.

- Q. So it is your opinion that he could between Birmingham and Tuscaloosa. Now, between Tuscaloosa and New Orleans, arriving on the same train at Tuscaloosa, and he would attempt to buy a ticket, or try to buy a ticket and get his same seat, or another seat from Tuscaloosa to New Orleans, do you think that is possible?
  - A. It is possible, of course.

Q. Would it be probable?

A. I would say it would not be every day that he could do that, but---

Q. Thank you. Now, do you always have the same arrangement of cars, that is in regard to coaches, on the various trains that you have made a statement on?

A. That is the minimum that we have.

Q. Any added cars on there, what class of equipment would it be?

A. They would probably not be air conditioned cars.

Q. Probably with steel underframe; they might be steel cars, but they would not be air conditioned, you would not [fol. 1607] have any revolving seats, would you, in them?

A. Well, no, they would not be streamlined cars. The

only revolving seats we have are on the streamliners.

Q. Do you have any knowledge of your revenue at the present time, excepting that you know you have added revenue?

A. No, I haven't any figures with me on the revenue.

Q. Now, this terminal delay of freight trains occasioned by the heavy movement of passengers, I. think you said it was primarily occasioned by troop movements. Of course past eight hours that would be overtime, would it not?

A. That is right.

Q. Under certain conditions a man might not complete his run under the 16-hour statutory limitations?

A. That is possible, yes, sir.

Would that man then receive deadhead pay to his terminal, to his home terminal?

A. He would if we sent another crew over to get the train.

Q. You would have to?

A. Which we most frequently do.

Q. You would have to if the train was on the border line of the 16-hour statutory limitation?

A. No, we have the privilege of camping them on the

line of road and letting them take their rest.

Q. If he took his rest, would he be on time, that is on pay time while he was taking his rest away from the terminal?

[fol. 1608] A. Not until he would start up again immediately after his rest was up, which is eight hours.

Q. What do you charge that to?

A. That is all charged to freight.

Q. Now, on the freight cars that are on passenger trains in troop movements, the revenue from that is assigned to what?

A. The freight revenue goes to the freight accounts, and the passenger revenue goes to the passenger accounts. Q. It is divided up?

A. Yes.

Q. Do you have any empty car movement at all, Mr. Simpson in the handling of civilian passengers today on your regular trains?

A. We have some. Civilian travel of course will more nearly balance than troop travel, but there are empty car movements in the handling of civilian travel, too.

O. Give me an example, please.

A. Well, week-ends, for instance, usually the heavy travel begins on Friday. We would have to get a car down to an outlying point to come in on that train on Friday, and then we would have to run that car back on that train, say, Sunday. Well, Monday there wouldn't be any need for it, so far as the travel going is concerned, but we would bring it in, because we would get the use of that car through the week for any other movements, that might materialize, instead of leaving it at some point [fol. 1609] until the need came up next Friday.

Q. You would handle that car on a regular passenger

train?

A. Yes.

Q. A scheduled passenger train?

A. That's right.

Q. Therefore you would not have any train movement on that ear at all, you would have just an added car?

A. Just an added car, yes.

Q. In the movement of troops though, in train lots, you don't have that condition, you cannot handle these on your regular trains, that is a trainload, you cannot handle that on the regular scheduled train, can you?

A. There is a limited amount that I can handle on a

regular scheduled train.

Mr. Bruce: That is all I have, Mr. Simpson. Thank you.

Examiner Stiles: Are there any other questions on redirect?

Mr. Oliver: Nothing more, thank you. Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: We will take a short recess at this time.

(Whereupon, a short recess was taken.)

Examiner Stiles: Call your next witness.

Mr. Oliver: I will call Mr. Tassin.

J. S. Tassin was sworn and testified as follows:

[fol. 1610] Direct examination.

### By Mr. Oliver:

Q. Give your name to the reporter, please, and state your residence and official railroad connection.

A. J. S. Tassin, residence Arlington, Virginia, general statistician, Southern Railway System Lines, with head-quarters at Washington.

Q. State how long you have held your present position, and generally the experience you have had in railroad accounting and statistical work?

A. I have held my present position since 1932, and I have had 40 years continuous experience in the accounting department of some one or more of the Southern Railway System Lines.

Prior to 1914 I was in the bookkeeping and disbursing departments. In 1914 I was detailed to valuation work. In 1917, in addition to valuation work I had to take on the auditing of construction accounts and disbursement accounts.

In 1918 I was put back exclusively on valuation work, and in 1920 I was made auditor of valuation, and in 1932 I was appointed to my present position.

Q. Mr. Tassin, you have prepared an exhibit for introduction in this proceeding, have you not?

A. Yes, sir.

Q. Consisting of 22 pages?

A. That is correct.

Mr. Oliver: I will ask, Mr. Examiner, that this be marked [fol. 1611] for identification at this time as Exhibit No. 17, I believe it is.

Examiner Stiles: Let the reporter so identify it.

(Exhibit No. 17, Witness Tassin, marked for identification.)

# By Mr. Oliver:

Q. Will you take up your Exhibit 17, Mr. Tassin, page

by page, and explain it?

A. The first three pages will be found to be self-explanatory, so I will pass at once to page 4 of the exhibit, which shows the loss in passenger revenue reflected by what would have accrued had the increase sought in intrastate fares been in effect in the state of Alabama during the three periods shown in the statement.

The first of these periods is the 12-months' period ended with February 28, 1943. In other words, I started with the month of March, 1942, which was the first full month after the Interstate Commerce Commission had granted

the 10 per cent increase. The next column-

Mr. Bruce: Wait a minute. You say there would be a loss there through the action, I mean occasioned by the fact that the Alabama Commission did not grant the, 10 per cent increase?

The Witness: I said it is the loss that is reflected by that computation, had it been possible to have the increase her-sought put into effect. I do not claim that it was possible to put them into effect on that date, but we are trying to establish comparable periods, as to what the effect [fol. 1612] would have been.

### By Mr. Oliver:

- Q. Mr. Tassin, the fares in Alabama, increased fares in Alabama, were published to become effective December 1, 1942, were they not?
  - A. That is correct.
- Q. As I understand it, what you are attempting to do is to show what the revenue would have been, or what the loss would have amounted to on a yearly basis, and you have taken first the year ended February 28, 1943, and second the year ended March 1, 1943?
  - A. That is right.
- Q. To arrive at an annual loss as a result of this failure to get the increase?

Mr. Bruce: I want to ask counsel if he proposes to have his witness show that the revenues in 1942,—I mean in 1943, will be comparable with 1942?

Mr. Oliver: I don't know that I understand your question.

Mr. Bruce: Well, do you anticipate any increases in

1943 over 1942?

Mr. Oliver; I think the statement will show that. If you will be a little patient, Mr. Bruce, I think you can on cross examination develop, if Mr. Tassin does not bring out exactly what is shown, or what you wish to find out.

Mr. Bruce: Well, we will let him proceed.

By Mr. Oliver:

Q. Suppose you go ahead with your explanation. [fol. 1613] A. Yes, sir.

Q. I think Mr. Bruce will find that.

A. I will state for Mr. Bruce's information that the figures for the year 1943 are in the statement and automatically show the comparison 1943, and 1943—I mean 1942 is in the statement.

Mr. Bruce: Do you have it in months in 1943? The Witness: We have no months in 1943.

Mr. Bruce: I have them.

Examiner Stiles: You have four months in 1943?

The Witness: Yes, in this first statement, of what the loss would have been.

By Mr. Oliver:

Q. All right, go ahead with your statement, Mr. Tassin. A. The statement shows that had the arrangement here sought been in effect in the first twelve months period, there would have been \$654,255 more in the cash drawer on these fourteen carriers. For a 12-month period

Examiner Stiles: Do these fourteen carriers all operate in the state of Alabama?

The Witness: They do, and they are the fourteen carriers who have been made Respondent in this proceeding.

Dropping forwarl a month, and taking the 12-months comparison on the basis, the loss in revenue rises to \$688,983.

For the four months period ended with March 31, 1943, a [fol. 1614] third of a year, the indicated loss is \$250,166, and raising that to an annual basis by multiplying by three, it is \$750,498.

## By Mr. Oliver:

Q. Then, Mr. Tassin, your figures shown in the last column are really reflecting the revenues of which the carriers have been deprived up to March 31, 1943, do they not?

A. That is correct.

Examiner Stiles: This page also discloses the answer to Mr. Bruce's question, doesn't it, that it shows, too, an increase in the traffic in 1943?

The Witness: That is correct.

Examiner Stiles: A decided increase?

The Witness: That is correct.

Mr. Bruce: This is intrastate revenue—it might save considerable cross examination, if I might ask him a question.

Mr. Oliver: All right.

Mr. Bruce: With your permission.

Mr. Oliver: Yes, go ahead.

Mr. Bruce: The losses in intrastate revenue, what kind of a loss is that, is that a net loss, is that a net revenue loss?

The Witness: No, it is a gross revenue loss.

Mr. Bruce: It is a gross revenue loss; yes, go ahead:

#### By Mr. Oliver:

Q. Now, Mr. Tassin, so far as the Southern Railway Company and the Alabama Great Southern Railway Comfol. 1615] pany are concerned, these figures were prepared by you, or under your supervision, were they not?

A. They were, under my supervision.

Q. Now, as to the other railroads shown on sheet 4, or page 4 of your exhibit, how was that information obtained?

A. They were furnished me by the accounting departments of the Southern roads, at the request of their passenger representatives.

Mr. Oliver: Now, I might state at this point, Mr. Examiner, that we have present accounting representatives of the Atlantic Coast Line, the Louisville and Nashville Railroad, the Seaboard Air Line, Illinois Central, the Central of Georgia Railway Company, and the Western Railway of Alabama, and the Gulf, Mobile & Ohio, whose losses in revenues account for the most substantial part of it, of the revenue losses shown. The Tennessee, Ala-

bama & Georgia, for instance, who is not represented, the loss is shown as only \$395 for the four months. The St. Louis-San Francisco loss is only \$503, the Nashville, Chattanooga & St. Louis loss is \$78, and the AT&N is the only road that has any substantial income involved who

hasn't a representative here.

Mr. Tassin of course is not prepared to stand cross examination on the details of the data for these roads other than the Southern Railway Company and the Alabama Great Southern, but these other railroads have witnesses here who can give any information desired as to [fol. 1616] the losses shown or forecasted losses for their respective railroads.

Examiner Stiles: As I understand, you intend to call

those witnesses only if-

Mr. Oliver: If anybody desires to cross-examine them as to the details of their particular figures.

Mr. Bruce: Mr. Counsel, are these accounting witnesses! Mr. Oliver: Yes, they are accounting witnesses of the various railroads.

# By Mr. Oliver:

Q. Now Mr. Tassin, you might explain just how you arrived at the losses or forecasted loss for the Southern Railway Company and the Alabama Great Southern?

A. We make a monthly accrual of intrastate revenues in the several states in which we operate. It is a part of

our regular accounting procedure.

Then when it came to preparing a loss accrual here for the Alabama Great Southern and the Southern, we went back over the details underlying our monthly accruals, beginning with 1942, and found that the month of April, 1942, was a fairly representative month.

We separated for that month the tickets that would be, and would not be affected by the proposed increases here, not only the tickets, but the conductors cash reports; and

interline reports, all of the basic information.

We ruled out, for example, the people traveling on fur-[fol. 1617] lough, and got a representative figure for the revenue that would be increased were this petition granted. And then on the percentage relationship of the other months of the year to the month of April, we arrived at the estimate of loss here shown. Examiner Stiles: You say you ruled out the people traveling on furlough. Isn't their fare based on these fares that you did consider?

The Witness: That class of fares is not subject to in-

crease.

Mr. Oliver: That is the 11/4 cent fare.

The Witness: And therefore there would be no loss. That is the 11/4 per cent?

Mr. Oliver: I mean 11/4 cents a mile.

The Witness: 11/4 cents a mile. We segregated the class of travel that would be subject to the petition here.

Examiner Stiles: I am interested in this point, that although the Southern has more mileage in the state of Alabama than any other railroad, yet your statement shows the loss from the L&N to be more than three times as great as that of the Southern. Have you anything to say as to that, why that is?

The Witness: Well, that would indicate that the Alabama Great Southern has more intrastate business in Alabama than does the Southern.

Examiner Stiles: You mean the L&N1

[fol. 1618] The Witness: The L&N. Now, the L&N itself has 101 more miles in Alabama than the Southern, they are very close together, but when you add the Southern and the Alabama Great Southern together, the Southern Railway System Lines have more mileage in Alabama than the Louisville & Nashville and the NC&StL together, for example. That is what Mr. Simpson said, that we had more mileage in Alabama than the Alabama Great Southern. He was adding together our system lines, the Alabama Great Southern and the Southern.

Examiner Stiles: Of course adding this estimated loss of the Alabama Great Southern and that of the Southern, you still have less than one half of that estimated for the L&N. I was wondering if they used any other or different method from what you did in determining this estimated loss.

The Witness: Mr. Kennedy of the Louisville & Nashville is here, and he will be able to furnish information as to the conditions on that road in Alabama.

Examiner Stiles: You are not informed as to whether these other carriers used the same method you did in determining this estimated loss?

The Witness: All of the carriers were requested to furnish the most accurate information possible. Those who had actual figures were requested to use actual figures; those who had to have recourse to accruals were asked in the light of operations of their road to furnish [fol. 1619] the very closest approximation possible. No ironclad rule was used. We were aiming at an ultimate accurate result on the amount of loss involved.

Examiner Stiles: All right, proceed with your explana-

tion.

The Witness: Before I pass from this stage, I want to indicate a simple computation that I wish to use later on

in the illustration of the succeeding page.

Take the average annual loss for the year ended February 28, 1943, which is the closest period in time to the year 1942, in its entirety. Divide that \$654,255 by 12. The average monthly loss is \$54,521. If you multiply that by 10 and 9/14ths of a month, you will produce an amount of \$580,259, the indicated loss, beginning on February 10, 1942, when the 10 per cent increase went into effect. I wanted that fraction of a year in there for use on page 5, to which I will now pass.

Now, this page 5 shows the net railway operating income or deficit produced by passenger service as reported annually by these several carriers to the Interstate Commerce Commission, under rules prescribed by the Inter-

state Commerce Commission.

Taking the total line, No. 20, line No. 20, the total for the twelve roads, because the two second class roads make no such report to the Interstate Commerce Commission, not being required to do so

Examiner Stiles: These are figures for the entire system, are they?

[fol. 1620] The Witness: These are figures for the entire system as reported to the Interstate Commerce Commission under rules prescribed by the Commission and represent the aggregate of the twelve first class roads operating in the state of Alabama.

It will be observed that in 1936 there was a deficit of \$30,000,000; in 1937, \$27,000,000; in 1938, \$32,000,000; in 1939, in round figures again, \$32,000,000, and in 1940, in round figures, \$33,000,000. In 1941, the deficit dropped to \$19,000,000, but you still had a deficit.

Now, if we add together those first six deficit years,

there is a cumulative deficit of some \$174,000,000.

In the year 1942 when I add to the thirty-one and some odd millions of dollars shown, the \$580,289, which I have accrued for the year 1942, I produce an income of \$32,000,000.

Now, dividing that income of \$32,000,000 into a cumulative deficit of \$174,000,000 shows that we must have five and two fifth years of prosperity to even the account, so to speak, as far back as 1936.

### By Mr. Oliver:

Q. That is based on earnings for 1942?

A. Assuming that for five years to come, or six years to come, the present volume and conditions are going to fairly hold. And we must remember this, that passenger deficits did not begin in 1936 when the Interstate Commerce Commission first required them to be reported, but my own knowledge for Southern Railway System Lines is that there was a deficit all the way back to 1921, and [fol. 1621] I think that condition pretty generally obtained in the Southern region.

Examiner Stiles: Hasn't that been considered in making the freight rates, hasn't it been considered in every freight rate case of any proportions?

The Witness: Of course that is taken into consideration.

Examiner Stiles: So that you would not hope to arrive at a passenger revenue now that would wipe out the deficit

of those past years?

The Witness: No, I am merely showing the comparison. What we specifically are doing here of course is to seek to make the fares and charges in the several states the same as on interstate business, and get an equal level of

passenger fares and rates all over the country.

But in addition — that, we are indirectly accomplishing two other purposes, as my exhibit will show later on. In the first place, we are bringing together the two ends of the passenger trains, bringing them closer together as revenue producers. The head end of a passenger train is composed of baggage, mail and express cars, and produces more revenue per mile than the passenger carrying cars. In fact, 23 per cent of the miles produce 27 per cent of the revenue. If this petition is granted, it will tend to

bring together the two ends of the passenger train as revenue producers.

Another thing that it will tend to do is that it will bring [fol. 1622] together closer freight and passenger services

as bearing the general transportation burden.

Now is the opportune time to put our houses in order, in respect to these several things, and try to get approximately a more nearly representative condition as between the services.

Now, we cannot of course hope for any era of prosperity long enough to offset past passenger deficits. We expect passengers to fall back into the deficit class just as soon as the war is over. That was the experience following the last war, and I see no reason why it should not follow this war also.

I am going to ask that we pass now to page 10 of the exhibit. I want to call attention to a figure there before I come back to page 6. Here we show the revenue per

passenger earrying mile in cents.

In 1936, in round figures, it was approximately 15 cents a mile, 1937 16 cents, 1938 15 cents, 1939 15 cents, and 1940 15 cents. So, for those first five years passenger carrying cars produced about 15 cents a car mile in revenue.

Examiner Stiles: Do those figures in percentages on line

1 indicate account numbers in the ICC reports!

The Witness: That is correct. Now, in 1941, there was a jump to 20 cents a mile, and in 1942 a jump to approximately 37 cents a mile, as a result of this added passenger

traffic since the war opened.

[fol. 1623] Now, turn to the next page, page 11, which shows the revenue per mile produced by the head end cars, baggage, mail, express and milk, and so forth. There in 1936 it was 25 cents a mile, 1937, 24 cents a mile; 1938, 22; 1939, 22; 1940, 22; and in 1941, 24; 1942 it was 26, not anything like the figures in revenue produced by these cars comparable to that produced by the passenger carrying cars. But the head end cars do produce proportionately more revenue per mile than the rear end or passenger carrying cars.

Mr. Bruce: Is that made up of the average of one month

applied to the entire year?-

The Witness: Oh, no, these are actual figures, annually reported to the Interstate Commerce Commission.

Mr. Bruce: But I mean in computing your amounts, and arriving at the figures. You stated the average figures for 1942. Do you use one month, the month of April?

The Witness: No, no, that month of April was used only

in connection with the revenue loss on page 4.

Beginning with page 5, all of the figures are 12-month figures, taken from annual reports rendered to the Interstate Commerce Commission and on file with the Interstate Commerce Commission.

Mr. Bruce: And are system figures?

The Witness: They are system figures.

Mr. Bruce: You, haven't anything to show what the [fol. 1624] actual Alabama figures are?

The Witness: No, we have made no separation of these figures for the state of Alabama.

Mr. Bruce: I call that to your very close attention, Mr. Examiner.

The Witness: In that connection, I will explain that these trains operating in the state of Alabama are interstate as well as intrastate trains, the interstate and the intrastate service being rendered by the same train over the same route, and it is not practical to attempt a segregation as between the services as between intrastate and interstate.

Mr. Bruce: Therefore, you don't know what it is intrastate?

The Witness: Specifically, no,

Mr. Bruce: Thank your

The Witness: We have other comparisons though which will show the general relation of the state to the system.

By Mr. Oliver:

Q. Proceed, Mr. Tassin.

A. Now, if we turn back to page 6, I will deal with the last figure to the right on line No. 20. If we attempted to make up the deficit out of passenger revenue alone, that is the system deficit out of system passenger revenue alone as reported in account 102 to the Interstate Commerce Commission, that revenue would have to be increased by 31 per cent.

Q. Pardon me, Mr. Tassin. You referred to line 20: I think you meant 19.

[fol, 1625] A. Line No. 19, yes. I meant line 19. If we attempted to spread that over accounts 102 and 108, the percentage increase required would drop to 30. That figure is also on line 19.

Mr. Bruce: Are these based on system averages also? The Witness: These are the system figures.

Mr. Bruce: And you don't know what the actual is,

what they actually are in Alabama?

The Witness: No. Now, if we took the total passenger train revenue, including switching, the percentage of increase would drop to 22, and if we took in all passenger revenue it would drop to 21. There is a spread of 10 percentage points between the high and the low figure.

Now, I have already shown that the head end cars produce relatively more revenue per mile than the rear end cars. It is a matter of common knowledge that they do not incur as great an expense as the rear end cars. There is not the same expense for cleaning and supplying, and of course they do not incur the same proportion of station expense. There is very little station expense that would be chargeable to mail, baggage and express. The greater portion of that is chargeable to passengers.

So, that is the general situation there that any improvement sought should preferably come out of the passenger

fares and rates.

Mr. Bruce: Is that because of the fact you compete [fol. 1626] directly, through your express company, which you own the majority of stock in, with the

Mr. Oliver: Mr. Examiner, I object first to cross exami-

nation at this stage-

Mr. Bruce: I withdraw it.

Mr. Oliver: I have been very patient with Mr. Bruce.

Mr. Bruce: I withdraw the quéstion. I ask your pardon, Mr. Oliver:

Mr. Oliver: All right.

### By Mr. Oliver:

Q. Proceed, Mr. Tassin.

A. Now, turning to page 12, which deals with the total railway tax accruals for each of these years 1936 through 1942, using the year 1936 as index number 100, that appears on line No. 19, we find that in 1937 taxes had increased by 5 per cent over what they were in 1936. In

1938 the increase was 13 per cent, in 1939 the increase was 18 per cent, in 1940 the increase was 29 per cent. In 1941 the increase was 102 per cent, and in 1942 the increase was 395 per cent.

Examiner Stiles: These again are system figures. .

By Mr. Oliver:

Q. 1941 you said 102. It is 202, is it not?

A. No, you have to subtract 100. The ratio is 2.02.

Examiner Stiles: These again are system figures.
The Witness: These again are system figures.

By Mr. Oliver:

Q. Now, turning to page 13, line 19, we have the comparison on basis of what the Commission apportions or [fol. 1627] ascribes to passenger service, where the increases in 1941 and 1942, for example, are not near so great as they are for the system as a whole.

Now, these two pages show that freight is bearing the

lion's share of the tax burden.

Mr. Bruce: This is a system figure.

The Witness: These are system figures. Incidentally, I neglected to say, when dealing with page 5, these deficits through the year 1941, that to the extent that we have overcome that deficit, we merely break even. There is no return provided here on investments in property used in passenger service, so when we look at that \$32,000,000 income in 1942, out of that there should be taken whatever amount is a fair return on property and in passenger service.

Now, taxes are not the only elements of cost that have increased. Line 18 of page 14, using again the year 1936 as Index No. 100, shows that the average hourly rate of compensation paid employees in 1937 was 4 per cent higher than it was in 1936. In 1938 and 1939 it was 10 per cent higher. In 1940 it was 11 per cent higher. In 1941 it was 18 per cent higher, and in 1942 it was 28 per cent higher. That is a rate of compensation, not the total amount of money paid employees, but merely the rate of compensation, the general average rate of compensation had increased to that extent.

Page 15 shows similar increases in the prices paid for [fol. 1628] materials and supplies. Taking the very last column of figures, December, 1941, and comparing with the first column of figures, October, 1936, as index No. 100, forest products had increased by 48 per cent, iron and steel products by 22 per cent, miscellaneous products by 9 per cent, and the total excluding fuel, by 24 per cent. Fuel had increased by 25 per cent, and the total including fuel drops back to an increase of 24 per cent.

The figures are taken from figures underlying Dr. Parmalee's Exhibit A-36 introduced in Ex Parte 148 re-

opened.

In that exhibit, he does not show this detail, but I went to his office and got the underlying figures represented or reported to him by the railroads as he had grouped them, and computed these figures for the Southern Region only. Of course Dr. Parmelee in Ex Parte 148 reopened spoke for the country as a whole, but these figures pertain to the Southern Region railroads only.

Examiner Stiles: Are these the unit prices of the articles indicated on the market, in general, or only as

purchased by the railroads?

The Witness: As purchased by railroads.

Examiner Stiles: In other words, the forest products would not be all forest products, but only such as the railroads use?

The Witness: Such as the railroads use. Dr. Parmelee [fol. 1629] obtains semi-annual reports from representative carriers, and they report the increases as obtained from their specific purchase of these groups of material.

Mr. Bruce: I object to this witness stating what Dr. Parmelee did. He is using Dr. Parmelee here as a reference for his exhibit. Mr. Examiner, he doesn't know what formula Dr. Parmelee used.

Examiner Stiles: He examined the records, as I understood him to say.

The Witness: I went to Dr. Parmelee's office and got the underlying records. I am responsible for these figures. The figures are reported by the railroads to Dr. Parmelee, among others by the Southern Railway Company.

Examiner Stiles: You compiled these data?

The Witness: Yes, sir.

Examiner Stiles: You know what they cover?

The Witness: Yes, sir.

Mr. Bruce Then let him state they are his figures. He is using Dr. Parmelee as an authority, stating what Dr. Parmelee did.

Mr. Oliver: I think he made it perfectly plain.

The Witness: I merely wanted to show the relation between my exhibit and the exhibit that Dr. Parmelee put in in Ex Parte 148. We both used the same basic figures, and each of us is responsible for our own conclusion. [fol. 1630] Examiner Stiles: All right, I think they are properly explained.

### By Mr. Oliver:

Q. Proceed.

A. On page 16, now, looking again at line 19, I show a direct comparison of freight and passenger operating ratios for the twelve class I roads involved in this proceeding, and I show for example that viewed as a group, in 1936, the freight operating ratio was 67 as compared with 126 for passenger. In 1937 we had 69 for freight and 121 for passenger. In 1938 we had 68 for freight and 128 for passenger. In 1939 we had 66 for freight and 128 for passenger. In 1940 we had 67 for freight and 127 for passenger. In 1941 we had 62 for freight and 107 for passenger.

In 1942 we had 58 for freight and 68 for passenger, showing that as the passenger volume increases, and if we can get the adjustments that are being sought, we equalize to a better degree under existing conditions the share of the general transportation burden as between your freight and

passenger services.

Passenger is still to an extent a burden upon freight. These operating ratios are customary operating ratios obtained by—

Examiner Stiles: Explain that statement, when you say "the passenger is still a burden upon the freight."

The Witness: To an extent.

[fol. 1631] Examiner Stiles: You mean when you include the return that you should have on the investment in the passenger end of the business?

The Witness: That is, of course, an element, but what I had specific reference to is that the freight operating ratio is still lower than the passenger operating ratio. If they were both producing the same ratio, same operating results, I mean, they would be on a parity, let us say.

Examiner Stiles: All right, proceed.

The Witness: As I said, these figures represent the result we obtain when we divide revenues into expenses only.

The next page, page 17, shows the results when we add to expenses taxes and rents. I don't hink any further explanation is needed on that page.

Now, whenever anybody says 1942 to me, I say 1932 to them. I can see no reason for laying more emphasis on 1942 than 1932, and I myself have ventured the specific statistical prophesy that 1952 is going to make 1932 look like prosperity.

The railroads, judging by their past experiences, have far fewer fat than lean years. If you were going to take any impoverished animal and start feeding it, fattening him for the market, so to speak, you are going to let him put a little fat on his bare bones before you try to stop it. We want to produce something like an average condition, because after all the making of these fares and charges is [fol. 1632] long range work. It is not a matter that changes from year to year, it has to proceed on the basis of long range experience.

Now, I have taken here the entire experience from getting out of one war and getting into another, so as to show all of the ups and downs that are involved between the periods of inflation that are ins-perable from wars and the periods of depression that human ingenuity cannot prevent between wars.

Here are 22 years of experience. The average year of 1922 shows investment in railway property used in transportation service, including cash and materials and supplies——

Examiner Stiles: That is the book investment of the carriers?

The Witness: The book investment of the carriers that is devoted to transportation service, as annually reported by them to the Interstate Commerce Commission in Schedule 211-N of the annual reports, and it is the only basis that we have for comparison over a long range period.

Then I show the net railway operating income, and these roads as a group over 22 years of experience have earned 3.24 per cent on their investment. There is certainly nothing there to encourage permanent investment in railroad securities.

On page 19 I offer the same relative comparison for the Southern Region roads as a whole, class 1 roads. There the average rate of return is 3.23, so that these roads operating in Alabama shows a comparable experience with the roads [fol. 1633] that are operating in the Southern Region as a whole,

Now, on page 20, because all of these roads are not of the same relative importance, I have tried to produce a weighted average figure on some consistent basis that would give a weighted average result with respect to these roads operating as a system or as systems, and also the portions of them that operate in the state of Alabama. I have used miles.

I am taking the entire line, I am now looking at line 20, the weighted result for these roads as a whole, the average rate of return over the 22 year period was 3.11 per cent; less than the 3.24 when you lump them together as a group, and less than the 3.23 when you lump all of the Southern Region roads together as a group, 3.11 for the entire line, and strange as it may seem, the same figure when the weighting is based on miles operated in the state of Alabama.

Now, that result may look a little strange when we look at the rate of return of the Southern, for example, 3.73 per cent, and the Louisville & Nashville, 3.77 per cent, the two dominant roads having a decidedly higher rate of return than the weighted average for the group. But if you will look at the AB&C with a deficit return, and the other roads down the line with less, they weight the average down to a more representative figure or level.

Now, here I am comparing Alabama with the entire line to show that the operations in Alabama with respect to these [fol. 1634] roads is not greatly different from the operations as systems. In other words, there is not anything that happens in Alabama that is so greatly different than from what happens in other states, through which these roads operate.

Now, on the next page, page 21, I show here the fact and extent of revenue need. I want to explain just what that is. That ratio is obtained by dividing gross railway operating income as a divisor; gross operating outgo, plus a 534 per cent return on investment as a dividend; and the resulting ratio indicates whether or no over this extended period there is need of additional revenue, and by what per cent

gross would have to be raised to provide these carriers with a net railway operating income equal to a 5% per cent return on their investment.

For the group here, and over that extended period, both from the point of view of inter-line operations, and operations in the State of Alabama, we find that there is a need of 13 per cent additional income as a result of long range

computations:

Now, on page 22, I offer another and a final comparison. The latest appraisal put out by the Bureau of Valuation and entered as Exhibit A-11 in the original Ex Parte 148 proceeding shows computations of that bureau of how much capital would be required to reproduce these several properties as of January 1, 1940, to acquire their lands at the [fol. 1635] present value of them, and to provide them with working capital.

I have compared that figure with the amounts returned by these carriers in Schedule 211-N to the Interstate Commerce Commission and show that if they were to provide the public with these facilities as of January 1, 1940, they would have to increase their capital investment by 12 per

cent.

That concludes my explanation of Exhibit No. 17. But on yesterday a question was raised as to what our statistics may or may not show with reference to the average number of passengers per car. I have before me Southern Railway Company's annual report for the year ended December 31, 1942, to the Public Service Commission of the State of Alabama, and we will turn to page 904 of that report, schedule 931, statistics of rail line operations.

I call attention to Item No. 76, on page 904, showing the passenger miles in the state of Alabama, 145,254,089. That

is your dividend.

Next I call attention to items 42 and 43, which show the car miles that carry passengers, and to that I have added one half of Item 47, which carries the car miles of combination cars, part of it being baggage or mail, and the balance passengers carrying.

And when I accumulate those mileage figures and divide into passenger miles, I find for the state of Alabama in the

year 1942 we averaged 28 passengers per car.

[fol. 1636] Now, just what does that statistic mean? It means one of two things, first, that you had a substantial movement of empty car miles; and, second, that the so-

called overloading of passenger car miles, while undoubtedly it does exist from time to time, is more or less equalized over the week, let us say. You may experience passengers standing in the aisles over the week-end, but if you ride on Wednesday or Thursday, you won't see nearly so many standing, if you see any standing, and these statistics equalize over the whole week.

There is a tendency on the part of all of us to overweight the unusual and the infrequent, and I don't think the overcrowding of passenger equipment is nearly as dark as the

picture has been painted.

Now, compare this result in Alabama with the result of the system as a whole, which is reported to Alabama and similar figures have been used there, taken from page 508, on which appears Schedule 531, where in Alabama we have had 28 persons per car, for the system as a whole we averaged 25, so to the extent of three persons per car, Alabama is a little bit worse off than the system as a whole.

That is all I have on direct.

Mr. Oliver: You may cross examine.

Cross-examination.

### By Mr. Bruce:

Q. Mr. Tassin, all of the investment figures that you have in your exhibit come from book values, do they not! [fol. 1637] A. Yes, with an explanation. They are the book figures from which have been segregated any investment in property not used for transportation purposes. They are figures reported to the Commission under rules prescribed by the Commission.

Q. How do these figures, these so-called book values compare with the Commission's valuation of the Southern

Railroad, do you know?

A. Yes, generally speaking, they are lower.

Q. How much lower?

A. I have shown you 12 per cent lower than on the basis of cost of their reproduction new for these roads as a whole.

Q. I am not talking about cost of reproduction.

A. What are you talking about?

Q. Would the cost of reproduction in 1940 be the same as the cost of reproduction in 1932?

A. No.

Q. Of your property investment?

A. What?

Q. Of your system investment?

A. The cost of reproduction changes from year to year.

Q. Therefore they are not reliable are they, because they are much greater at this time than they would be at any other time?

A. I wouldn't say a figure if not reliable, because it is [fol. 1638] greater.

Q. In other words, you are using the average, and you don't know what your book values are, excepting the values you have on your books?

A. You are wrong, I do know.

Q. Well, tell me.

A. I am going to tell you. In the case of our roads at the time that the Interstate Commerce Commission first started the valuation proceeding, and I was connected with it all the way back to 1914, they started out to examine the contents of our investment accounts, the theory being, and it was a true theory, that there were certain elements in those investment accounts, which however proper they may have been at the time the entries were made were not in accordance with the Commission's present rules for stating investment.

And as we wanted a common reference there, we agreed that it was perfectly proper to exclude any items that were in our investment account that were not now permissible to be contained therein. As a contrary to this adjustment, out of the investment accounts as then stated on the books, I developed a large volume of earnings that had been ploughed back into the property and had been charged to operating expense, or directly against income or profit and loss, which under the Commission's present rules should be charged to investment in road and equipment, and I [fol. 1639] showed that there was more money to be adjusted into than out of the investment account.

Q. What did the Commission do?

Examiner Stiles: You are speaking there of the Southern Railway.

The Witness: I am speaking of the Southern Railway System lines. Now, the Commission developed its own costs of reproduction new.

Now, just a minute, just let me finish. Now, I consistently used our investment as a conservative sum of money less than the amount of investment proven required to produce the property, and a lot less than the amount that would have fo be raised if the property were to be purchased as of the present time, or produced as of the present time.

### By Mr. Bruce:

Q. But if the property was produced maybe five years from now, and the conditions were the same as they were in 1934, then your figures would be assailable, and they would not cover the situation properly?

A. No, they would not be assailable. If you want to make a fair comparison as between roads, the only fair basis is current costs of reproduction. Otherwise, you penalize a road that was built in a period of high costs and benefit a road that was fortunate enough to have been built in a period of low costs. The full comparison of like with like, as between the several railroads, is on the basis of current cost of reproduction new.

[fol. 1640] Q. All right, then you disagree with the Commission?

A. Humbly, yes.

Q. Yes. The Commission has its valuation. Do you use that valuation in arriving at rate making, before the Commission?

A. We do not.

Q. Does the Commission use it?

A. Well, now-you would have to ask the Commission about that.

Q. I am asking you.

A. I don't know.

Q. You are an expert witness, you are the statistician of the Southern Railway, and you have talked about property investments. Now, I want to know whether the Commission uses, in rate making, its book valuation, or uses your book figures?

A. I bent every effort to testify against them doing it, to prevent them from doing it.

Q. But they did it just the same?

A. I don't know.

Mr. Miller: May I point out in Ex Parte 148, the report on further hearing, they did not use any basis of valuation, did they?

The Witness: I think so.

Mr. Bruce: At this time I wish to make reference, Mr. Examiner, to I&S Docket 4495, in which the Examiner, the [60l. 1641] Chairman of the Commission at that time, Commissioner Aitchison, in which all of the exhibits of the carriers were ordered revamped, and the Commission's valuation shown.

Mr. Oliver: For what?

### By Mr. Bruce:

Q. Now, turn to page 4 of your exhibit.

A. All right.

Q. You stated, I believe, that all of your sheets in this exhibit are based on system averages, did you not?

A. With the exception of this page 4.

Q. This page 4?

A. And I also stated that that showed some comparison with state results in the back here, mileage and so forth.

Q. I am asking you to tell me.

A. Yes.

Q. Did you take into consideration the military movement in troop trains at reduced rates when you made this comparison for the Southern Railway?

A. Whatever happened is reflected in these figures.

Q. I want to know what you did?

A. I took the figures.

Q. You took the figures?

A. Yes.

Q. Did you take into consideration that troop movements in Alabama on the Southern moved under land grant rates?

A. That is reflected in the statements of our revenues, [fol. 1642] every condition that obtains is reflected in these

figures.

Q. What was the amount of the military travel for the period which you have shown? I think you stated the month of April was used. What is the amount of the military travel for the month of April over the Southern in Alabama?

A. We didn't develop the military travel as a whole.

Q. You don't know anything then about the proportion of military passengers traveling, that is, in relation to the civilian passengers, do you?

A. I do not, I didn't need to know. That is why I

didn't develop it.

Q. Did you take into consideration and can you tell me the amount and the number of passengers that moved in Alabama during the month of April, which you have used as an example on furlough movements?

A. On furlough movements, I haven't that detail

with me.

Q. You haven't?"

A. No.

Q. Have you taken into consideration here in your comparisons which you have made here for the month of April the round trip fares that were bought?

A. Oh, yes, we took into consideration every fare that

is affected by this petition.

Q. That is the amount of the round trip fares for the month of April, do you know?

[fol. 1643] A. I don't know the amount, I haven't that in mind.

Q. Don't you take your work sheets with you when you go to a hearing?

go to a nearing i

A. No, we can't take box cars to transport records any more.

Q. Does it take a box car to figure out how many passengers you handled in Alabama in the month of April?

A. The box cars couldn't do the figuring, but the box car might be required to transport the records.

Q. If you had work sheets, these work sheets would be

developed from the record, would they not?

A. The work sheets would be developed from the record over in our Atlanta office.

Q. You don't have these work sheets?

A. Not with me.

Q. And you don't know?

A. No.

Q. How do you know that the month of April is going to be representative?

A. We found that out that is why we made the test.

Q. I mean for the year 1933,—just wait awhile—for the year 1943.

A. We don't say it is going to be representative for the whole year 1943.

Q. How do you know that it was representative for the

vear 1942?

[fol. 1644]. A. Because we made an investigation that satisfied us as to that.

Q. That was based on system averages?

A. No. that was based on Alabama intrastate travel; in Alabama.

Q. You have no knowledge of how the figures for the other lines were compiled, or how they were arrived at, do vou!

A. No.

Mr. Bruce: Incidentally, Mr. Counsel, I want to examine whoever is here for the Louisville & Nashville Railroad, I want an explanation of the figures.

Mr. Oliver: We will call the witness, Mr. Bruce

## By Mr. Bruce:

Q. Now, have you included in these figures the earnings of the passenger trains, the so-called head end of the passenger trains?

A. In here?

Q. Baggage and whatnot?

A. Not on this page 4, no.

Q. Then how are you going to segregate the cost of operation against express and against passengers and against mail and against milk?

A. Are you talking about page 4 of the exhibit, or the

exhibit as a whole?

Q. Page 4 and the exhibit as whole. If you haven't

made a segregation, how can you arrive at a cost?

A. We have made a segregation in the sheets of the [fol. 1645] exhibits as I explained, as between passenger and mail, baggage, express and milk.

Q. Have you made a compilation, a segregation as to the cost of operation on the movement of express or mail!

A. We have made no cost computations in here other than to show deficits, and so forth.

Mr. Oliver: The figures shown on page 4 are gross figures, aren't they, Mr. Tassin?

The Witness: Yes, I stated that before, they are gross.

#### By Mr. Bruce:

Q. In other words, they are inaccurate?

A. No, no, no, they are not inaccurate.

Q. What is the express revenue for the month of April in Alabama over the Southern Railway, and what is the cost of operation?

A. I will give you, the express revenue for the year 1942.

Q. I am talking about April. You used April in the example. I want to know—

A. Express revenue has nothing whatever to do with

sheet 4.

Q. Isn't it a passenger earning?

A. Not subject to the petition here. Nobody is asking here an increase in express or mail revenues.

Q. Isn't express, mail and milk, cream, aren't they adjuncts to the passenger movement?

A. Yes.

Q. And it moves on the same trains, does it not? [fol. 1646] A. Yes.

Examiner Stiles: Mr. Bruce, this page 4 has nothing to do with this?

Mr. Bruce: No, but I am trying to find out, Mr. Examiner, whether this man knows what is the revenue. Of course, the rate of return would be decidedly different if he had used the ordinary adjuncts which travel on passenger trains, and added to the revenues, and the loss would be considerably different.

Examiner Stiles: Page 4 has to do only with the pas-

senger fares here involved.

### By Mr. Bruce;

Q. Now, Mr. Tassin, do you know whether there is any party movement, military party movement in the figures which you have arrived at here for the Southern in Alabama, traveling on a Government order?

A. Not of my personal knowledge.

Q. Is that included in these returns that you show here, the losses?

A. In these returns, all that is included is what is subject to the increase sought here, and not another copper cent.

Q. But you haven't the figures with you and you don't know what they are?

A. What?

Q. You haven't the figures with you and you don't know what they are?

[fol. 1647] A. I know they are not in there.

Q. No, and you don't have them in your possession here. I want to ask you this, with the exception of the years 1917, 1918, 1920, and possibly 1929 and 1930, did the passenger revenue on the Southern Railway ever pay its way?

A. I said as far as our lines are concerned, it was a deficit all the way back to 1921, the last war.

Q. Yes, sir, and your fares were about double what they

are at the present time then?

A. Well, in the beginning, just following the last war, the increased passenger fares, as you will recall, were put into effect to make passenger fare a more equitable portion of the general transportation burden, but we began to lose traffic, and we had to reduce the rates.

Q. Now, in your studies that you have made, in the operation of the passenger trains, have you taken into

consideration dining car service?

A. Yes.

Q. Has that ever shown a profit in the history of the Southern System?

A. In 1942 it does.

Q. That is the only year?

A. I have not specifically gone back: As a general proposition, I think there would be some others, probably.

Q I am talking about within your knowledge.

[fol. 1648] A. I would say generally speaking it would be a loss. Volume is what gives us profit. When we haven't got the volume, you most always have a loss.

Q. Do you have any dining cars on your mixed trains that you operate in Alabama?

A. No.

Q. You used system averages in arriving at cost of operation, and included in the system averages are dining car expenses, are there not?

A. I have not made any computation of costs.

· Q. I am asking you if you did include the cost of operation of your dining cars?

A. I have made no computations of costs.

Q. So you don't know?

A. I have not made the computations. I would know if I had chosen to make the computation.

Q. Will the same thing apply in regard to parlor and observation cars?

A. I have given a comparison of results of operations here. I have not gone into an analysis of costs, because it was wholly unnecessary. The results speak for themselves.

Q. Tell me, what revenue did you derive from an ob-

servation car on one of your streamliners?

A. If we sell the seats in there, we would get the seat fare. Under existing conditions we sell seats occasionally in observation cars. Otherwise, they are for the accomfol 1649 modation of passengers who are traveling in sections of the train, other sections of the train, just as the dining car is.

Q. And you have no revenue from them whatsoever in ordinary times?

A. The revenue is derived from the sale of the tickets that entitles the passenger to the use of the car.

Q. And is the cost of operation of these observation cars included in your cost of operation shown throughout your exhibit?

A. There are no costs shown in this exhibit. They are revenue results. Now, the mileage made by dining and observation cars is what cuts that revenue per passenger carrying car down to 15 cents a mile. I have included the mileage of all cars that serve the passenger.

Q. Didn't you have to figure your cost of operation before you could arrive at a net revenue?

A. I have not used net revenue, I have used gross revenue.

Q. Well, in the gross revenue then?

. A. When you deal with gross revenue, you obviously do not consider expenses.

Q. Why haven't you gone into expenses then? You appeared before the Commission. Isn't the Commission entitled to that information?

A. I am certainly endeavoring to give the Commission all the information that I think would be helpful to them. I [fol. 1650] showed them that up to and including 1941 there was a deficit from passenger operations; that in 1942 there was an income. Now, it doesn't interest them to go into

the minutia of costs, when the result is a deficit, when the cost is greater than the revenue.

Q. These results are computed from the book figures and

not from the Commission's valuation?

A. The Commission's valuation has nothing to do with expenses and revenues.

Q. It certainly has when they come to make rates or fares. Now, you are familiar with the rate situation—or, rather I will ask you if you are familiar with the revenue, passenger revenues of the Southern Railway during the year 1936. Tell me what their revenue was then, if you know?

A. Yes, I think I can give you that.

Q. The operating revenue?

A. In 1936, the Southern had \$9,869,700. That is account 102, passenger revenue.

Q. That was passenger revenue?

A. Yes, account 102.

Q. What was it in 1942?

A. In 1942 it was \$36,265,338.

Q. In 1936 did you know that the passenger fares were 1.5 cents in coaches in Alabama throughout the state!

A. They were not 1.5.

[fol. 1651] Q. What?

A. They had been increased on February 10 to 1.65.

Q. No, what I mean in 1936, in 1936, did you know the passenger fares were 1.5 in coach movements?

A. I have not checked back to see what the fare was in 1936. I think Mr. Aiken can give those figures.

Mr. Bruce: Do you know what the fares were in 1936?

Mr. Oliver: The record shows that. Just what the fares were, Mr. Aiken testified to it in detail. If you want to know what the fare was on the Southern Railway in 1936, for your information I will say it was 1.5.

Mr. Bruce: 1.5?

Mr. Oliver: In coaches.
 Mr. Bruce: In coaches?

Mr. Oliver: Yes.

### By Mr. Bruce:

Q. How do you explain the fact that when your revenues were at the low ebb, operating revenue, that your fares were supposedly reasonable, and published voluntarily in

coaches at 1.5 cents per mile, and today when your revenues are extremely high—not extremely high, but are much higher, that you proposed to raise them to 2.2, which is a

331/2 per cent increase over the basic fare of 1.5?

Mr. Oliver: Now, Mr. Examiner, the witness will answer if you care for him to, but I submit we are just wasting time to ask a statistical witness why the company wants to in[fol. 1652] crease fares at this time. If you will read our petition, you will see why we are asking for this increase. I think we are just wasting time to have a witness testify, statistical witness to answer a question of that kind.

Mr. Bruce: This witness has made several very startling assertions in regard to revenue and income, and what not, and the policy of the company. He even went ahead and went into the future. He is the statistician of the Southern Railway. He knows what the operating incomes are, he should know anyway, I don't know whether he does or not, or whether his clerks do, but he is here testifying. I have a right to know why, if he can answer. If he cannot answer he can quickly say, "I don't know."

Examiner Stiles: Read the question.

(Question read.)

Examiner Stiles: I agree with Mr. Oliver that that to my mind is not a proper question to this witness. Mr. Oliver said if he wanted to answer it, he may.

Mr. Bruce: If the witness can't answer, he can state so.

The Witness: I can answer.

Mr. Oliver: Answer the question.

The Witness: The thing is that in 1936 the rate was a subnormal rate.

Mr. Oliver: That is the answer.

The Witness: Made to win travel back onto the railroads [fol. 1653] if possible from the private automobile.

## By Mr. Bruce:

- Q. Now, that you have the travel back, and there is no avenue of escape for them, for that travel, you desire to go back into a higher rate, is that right?
- A. No, now that passenger is furnishing a volume of business somewhat comparable to freight, it should bear its equitable proportion of the general transportation burden.

Q. How about the future that you talked about, what is going to happen? You say you don't know and I don't think that I know.

A. There is no need for us to talk about it then.

Q. But you say you are planning on a long range basis?

A. I say that rates and fares are necessarily predicated on a long range situation and are not expected to vary from year to year.

Q. I am going to ask you—I don't know whether you know or not, but I am going to ask you if you were meeting some sort of competition, or trying to win away some travel from some other mode of transportation in 1936?

A. We were trying to get back such traffic, principally,

from the private automobile.

Q. Today there are no tires for the automobiles, and there is only a gallon and a half of gas here and there, isn't that right?

A. That's right.

[fol. 1654] Q. And there is no available private passenger operation to speak of with the exception of a very few districts in the United States, isn't that right!

A. That's right.

Q. Now, presuming that that condition is bettered, the press carries a statement today that we will have rubber after the first of January, 1944, and there is a resumption of available passenger vehicles on the highway, what will yow do then?

A. We will do what any intelligent business man will do, try to retain the volume of our revenues, to the best of

our ability, whatever is necessary. °

Q. Would that mean a reduction of rates?

A. I can't say. That doesn't fall within my province.

Q. What is your opinion as the statistical witness?

A. Based upon my observation as a statistician, any intelligent man protects his business to the limit of his ability.

Q. And would reduce rates to meet the competition?

A. When necessary.

Q. Today you don't have to reduce them though, you have got them?

A. Today if a man can mail himself a postage stamp; and save walking a mile, it is certainly preferable to hoofing that mile.

Q. Now, these deficits that you show on page 5, do they include the operation of your observation cars and dining

[fol. 1655] cars, or are they based only on passenger movements?

A. No, they include everything, that is the final picture.

Q. Now, is the passenger service offered by the railroads, is that a part of a railroad system's service to the public?

A. Obviously.

Examiner Stiles: Mr. Bruce, is this a convenient point for you to recess?

Mr. Bruce: Yes.

Examiner Stiles: We will recess until 2 o'clock.

Mr. Bruce: Thank you.

(Whereupon, at 12:30 p. m., the hearing was recessed until 2 o'clock p. m.)

#### Afternoon Session

The hearing was resumed pursuant to recess. 2:00 p. m. Examiner Stiles: Let's come to order.

Mr. Oliver: Mr. Examiner, I want to release Mr. Simpson unless somebody has some further questions to ask him. He wants to get back to the job at Birmingham, and I take it everybody is through with him, but I didn't want to let him go until we were certain about it.

Examiner Stiles: Who is that!

Mr. Bruce: We have no further questions.

Examiner Stiles: Who was it?

Mr. Oliver: Mr. Simpson. I would like to withdraw Mr. [fol. 1656] Tassin from the stand and let Mr. Gray put on his Illinois Central accounting witness. I think Mr. Bruce has a question or two to ask him. It is necessary for Mr. Sharpe to get away this afternoon, and if it is agreeable, I will withdraw Mr. Tassin for that purpose.

Examiner Stiles: All right.

Mr. Gray: Mr. Sharpe is our accounting witness to testify on cross examination as to the figures that went into the exhibit which Mr. Tassin put in.

John L. Sharpe was sworn and testified as follows:

Direct examination.

### By Mr. Gray:

Q. Give your full name and position?

A. John L. Sharpe, S-h-a-r-p-e. I am chief clerk of the Office of Auditor of Passenger and Station Accounts, Illinois Central/Railroad, 6327 Dorchester Avenue, Chicago.

Q. Would you briefly state your experience, Mr. Sharpe?

A. I have been connected with the Illinois Central Railroad continuously since March 18, 1910, as clerk, special accountant, traveling auditor, and chief clerk in the Auditor of Passenger and Station Accounts office.

Q. Were the figures that were presented to Mr. Tassin for use in his exhibit prepared by you or under your di-

rection?

A. The figures shown in page 4 of Mr. Tassin's exhibit were prepared under my personal direction.

[fol. 1657] Q. Which of the figures shown on that exhibit? A. The figures shown on line 12, for the Illinois Central.

Q. Are those figures true and correct to the best of your knowledge and belief?

A. They are.

Mr. Gray: That is all. Your witness, Mr. Bruce.

Cross-examination.

#### By Mr. Bruce:

Q. For the year ending February 28, 1943, you show a loss of \$361,769?

A. No, you are on the wrong line.

Mr. Oliver: That is the L&N.

The Witness: The line above that is the Illinois Central:

Mr. Oliver: Line 12.

The Witness: Line 12.

Mr. Bruce: Well, I had in mind the L&N. I made an error, Mr. Examiner, I wanted the L&N, the Louisville & Nashville witness, that is who I wanted. I wanted to have him explain to me the difference in the figures.

· Examiner Stiles: You have no questions of this witness

then?

Mr. Bruce: I am not concerned with \$515, no, sir, that the Illinois Central shows.

Examiner Stiles; The witness is excused.

(Witness excused.)

Mr. Bruce: I want to question the accounting officer of [fol. 1658] the Louisville & Nashville Railroad.

Mr. Oliver: We will call him.

Mr. Bruce: And I offer an apology for calling this witness. I made an error.

Examiner, Stiles: That is all right.

· Mr. Bruce: That was my mistake.

Mr. Oliver: Will you come around, Mr. Tassin, please? Examiner Stiles: You may proceed with your cross-

examination, Mr. Bruce.

J.S. Tassix having previously been sworn, resumed the stand and testified further as follows:

Cross-examination.

#### By Mr. Bruce:

Q. Which is the sheet in which you show your index to prices? That is materials that you purchased?

A. That is on page 15 of my Exhibit 17.

Q. I presume that by "forest products" you mean ties and lumber?

A. Bridge timbers, and so forth.

Q. Bridge timbers, and so forth, and so on?

A. Yes, that is correct.

Q. Are the prices on these various commodities-

A. What is that?

Q. Are the prices on these various commodities frozen as of March 15, 1942; I mean forest products?

[fol. 1659] A. I haven't that information.

Q. You don't know?

A. No.

Q. And would the same apply to steel?

A. I have not informed myself as to the status of the prices. These are merely a comparison of prices paid, the index relationship of the prices paid by the railroad:

Q. Will you say this, can prices be increased at the present time under the price control act?

A. I am not an expert on that.

Q. Well, you are not familiar with the law at all relating to price control?

· A. I only know what I see in the newspapers.

- Q. And that would apply also to miscellaneous products?
  A. Yes.
- Q. And on fuel you show in December, 1941, that the price was 125 per cent?

A. Yes.

Q. Is that right?

- A. Above what it was in 1936, 25 per cent higher than in 1936.
  - Q. That was over 1936?

A. Yes.

Q. And you don't know whether the prices on fuel are frozen?

A. No.

[fol. 1660] Q. And that would apply generally to anything that the Southern buys?

A. Yes, I am not on the staff of our purchasing agent.

Q. Now, in regard to labor costs.

A. Yes.

Q. When was the last increase that you had on train

operation labor?

A. Well, n-w, I haven't in mind the last date, but if you will permit me, the figures on labor were computed from the schedule No. 561, employees services and compensation.

Examiner Stiles: That is the schedule in the report made to the Interstate Commerce Commission?

The Witness: To the Interstate Commerce Commission for each of these roads.

#### By Mr. Bruce:

Q. Do you have any knowledge whatsoever of the matters involved in Ex Parte 148?

A. I followed the proceedings through both the original

and reopened hearings.

Q. Was an increase on labor granted in that proceeding, that is, was there an increase in labor cost granted by the Railroad Labor Board?

· A. Yes, that was one of the occasions for the request for the increase in Ex Parte 148.

Q. Was that made retroactive to September, 1941?

A. It was made retroactive, I haven't the exact date in mind.

[fol. 1661] Q. Has there been any increase since then?

A. There may have been increases granted certain employees, but no prescribed increase.

Q. You mean employees that are under the Rail Labor

Board jurisdiction?

A. No.

Q. That is what I mean.

A. This covers all employees.

Q. In other words, you could have raised the pay of a Division Superintendent, and maybe you have done that?

A. That is possible.

Q. But your actual labor has not been increased?

A. Not what we call the "agreement labor," contract agreement labor.

Q. Is that true also of your shop force?

A. That is true of all the union agreements.

Q. All of the other labor costs have been frozen, and you have had no increase therefore since September, 1941, with the exception of the supervisory force and clerical forces, some clerical forces?

A. Yes, possibly. That is approximately correct, I think.

Q. Was there an application which was submitted before the Railway Labor Board for increases in pay of certain employees with the railroads that were turned down by the Labor Board, Railroad Labor Board just recently? [fol. 1662] A. I wouldn't say it was turned down.

Q. It was denied, was it not?.

- A. No, I wouldn't say it was denied. There is some question of its revision, I believe. It has not gone into effect at any rate.
- Q. You don't know what your fuel cost is, that is, the coal cost per ton at the mine is?

A. At the mines?

Q. In Alabama, do you?

A. I haven't the figure in my mind.

Q. Do you know what your fuel cost is per ton at the mine in the Southern region?

A. I haven't that figure in mind.

- Q. You talked about a cycle of depressions and you talked about 1932, 1942, and then you said something about 1952?
  - A. Yes.
- Q. And you made certain predictions, that you do have depressions ever so many years, is that right?

A. I think experience bears that out.

Q. Then you stated that rate making should be based upon a long range proposition, is that right?

A. I think so.

Q. Is this the way that you—that is, is it your opinion that this long range planning should call for an increase in passenger fares at the present time, and would you [fol. 1663] continue that increase, or what would you do with it when you have this depression that you predict we will have come on?

A. Under any circumstances you would do the best thing according to your judgment at the time, and under the circumstances.

Q. How do you tie up these two statements that you have made, that you should be planning? You mean by that that you should better your reserves or what, anticipating a depression?

A. Well, take the particular—or take the present time. The intensified use of the properties is depleting them, and certainly after this intensive use is over, we shall need a substantial reserve to rehabilitate the properties.

Q. Now, in connection with all the equipment and facilities which you are providing at the present time for the handling of military movement, doesn't the Commission permit you to lay aside a certain sum to amortize what particular cost?

A. Over five years, we are permitted to amortize over a give-year period property purchased for the prosecution of the war.

- Q. You are also anticipating your taxes, are you not?
- A. We do that from month to month.

Q. You set aside what you may need?

- A. We accrue to the best of our ability what the taxes are. We are required to do that under the methods of accounting prescribed by the Interstate Commerce Commission.
- ·Q. Are you familiar with the decisions of the Commis-[fol. 1664] sion, and, particularly Commissioner Eastman's

assenting opinion in Ex Parte 148 reopened, the case in which he stated that, or made certain statements relative to the payment of taxes by the several carriers, excise taxes, income taxes, and what not?

A. I read the decision in Ex Parte 148 reopened.

Q. Are you familiar with the method of payment of excise taxes, the percentages that you pay at the present time, and income taxes also?

A. I am not our tax expert. We have a special department that handles taxes.

Q. Well, do you know as statistician; do you know what amount of income taxes was paid in 1942?

A. Our reports to the Commission segregate the amount of income taxes.

Q. Do you know what that is?

A. I can refresh my memory. This appears in Schedule 350, taxes on railway property, under the heading "U. S. Government taxes." The Southern Railway paid as payroll taxes \$4,148,420, and as "other taxes," which would include income taxes—

Q. I didn't ask you that. You have that itemized. I want the income taxes that you paid in 1942. Now, tell me what it is?

A. I can't, other than as reported to the Commission, I haven't the figure in mind.

[fol. 1665] Q. I will read from the same report, line 41, U. S. Government taxes, and under the heading of income, \$29,325,000.

A. All right, you have the information.

Q. And you paid that, you paid that in income taxes last year, the Southern System paid that?

A. The Southern Railway Company, this is not Southern Railway System.

Q. All right, Southern Railway Company. Do you know how much income tax you paid in 1942?

A. The same source would show it. I haven't the figure in mind.

Q. You don't know how much you paid for the first five months—

A. I don't carry all these figures in my mind. It is too small. We have too many figures to deal with.

Q. I will ask you this, if you will find the same item for me for 1941?

A. \$5,910,000.

- Q. In other words, you had an increase in your income taxes of approximately \$24,000,000 in 1942 over 1941, didn't you!
  - A. If that is the difference.
  - Q. According to your report?

A. Yes, our reports are correct.

Q. If you have any added revenue over and above what you had in 1942, in 1943, will not your income taxes increase accordingly?

[fol. 1666] A. Oh, yes.

- Q. Isn't that in line with what Commissioner Eastman stated, that the Commission had to take into consideration the earnings of the carriers?
  - A. Yes, and—
- Q. And the payment of income taxes to the Federal Government?
  - A. Yes, the earnings that stick, after payment of taxes.

Q. Did he not state that he did not think that the collection of taxes is the proper medium of rate making, or words to that effect?

Mr. Oliver: Now, Mr. Examiner, obviously the report of the Commission and Mr. Eastman's statement which appears in the report will speak for itself, and I object to this examination of this witness on Mr. Eastman's statement in Ex Parte 148.

Mr. Bruce: I withdraw the question, and I will submit an exhibit which quotes what Commissioner Eastman said in Ex Parte 148, the reopened decision.

Mr. Oliver: Maybe we might object to it, I don't know. We will look at it.

By Mr. Bruce:

Q. Now, I will ask you this, you have had increases as shown by your exhibit for 1943, the first four months, is that right, or three months?

A. That is the last month of 1942 and the first three months of 1943.

Q. In other words, up to March, 1942? [fol. 1667] A. 1943.

Q. 1943, rather?

A. Yes.

Q. If you have added income you pay added income taxes, would you not?

A. Obviously.

Q. And excise taxes also?

A. Whatever the taxes are, we will meet them.

Q. Your payroll tax has not been changed since 1942, has it—I mean since 1936, the percentage.

A. There is a sliding scale in there, but I am not familiar with the detail. I don't handle the tax matters.

Mr. Reynolds: Mr. Examiner, all of this is just a waster of time. I submit none of it is proper cross examination. I

object to the whole kit and kaboodle.

Mr. Bruce: Mr. Examiner, this witness came in here and he is offering a one-sided exhibit. He has not shown taxes, he has not shown cost of operation. The only thing he has shown is revenue and alleged deficit. He is the statistician of the Southern Railway. He is thoroughly qualified, he has had long experience, and I don't think a witness should be permitted to sit on the witness stand and testify to what he wants to testify alone. These figures that he has submitted here are all based upon system averages. He has shown deficits, and he has shown operating revenues, [fol. 1668] and I think we have a right to inquire—if they have another witness who is better informed, I am willing to take him on and release this witness right now.

Mr. Reynolds: The point of it is the questions are not proper cross examination. The gentleman is asking questions the answers to which are perfectly obvious, and they

have no bearing on the case anyway.

Examiner Stiles: What is the question that has been unanswered?

(The record was read.)

Examiner Stiles: Is there any other question man-

The Reporter: No sir.

Examiner Stiles: Proceed with your cross examination, Mr. Bruce.

#### By Mr. Bruce:

Q. You don't have these figures, and you don't know, you are not familiar with the 1938 or 1936 railway retirement act, are you?

A. I don't carry it in my memory. I can inform myself of it at any time that I wish.

Q. Now, turn to that same item and tell me what your

payroll tax was in 1941 and what it was in 1942?

A. You want 1941 first?

Q. Yes sir, if you please.

A. The payroll tax in 1941, railroad retirement tax in 1941 was \$1,688,071. In 1942 it was \$2,074,717.

[fol. 1669] Q. Would that indicate to you that your added taxes would be caused by the fact you have added employees?

A. Yes.

- Q. And there has been no increases in that tax, have there?
  - A. I have stated
  - Q. You don't know?

A. I don't know.

- Q. Now, the figures that you give us on your passenger car miles in Alabama, what is that figure again? I have forgotten. Was that 145,000,000?
  - A. That was 1942, the 1942 figures?

Q. Yes.

A., 145,254,089.

Q. What is the same item in 1941?

A. 58,990,949.

Q. Did you have as much troop movements, or don't you know, in 1941 compared with 1942?

A. Not of my personal knowledge. It is common knowledge we didn't have as much in 1941 as in 1942. It is a

matter of general common knowledge.

Q. Have you worked out any compilation, did you work out any compilation to show what your average passengers per car would be in 1941?

A. In 1941!

Q. Yes.

[fol. 1670] A. I will let you do it. I showed you how I did it in 1942. Supposing I give you the figures. Two million—do you want to take these figures?

Q. I want the number of passengers per car in 1941.

A. You have got to put the figures together and divide by—

Mr. Oliver: Mr. Examiner, just a moment. I object to the continued requests here now for mathematical calculations that counsel himself can make. If he wants the basic figures, all right.

Examiner Stiles: I suggest the witness give the basic figures and Mr. Bruce can compute it, and use it in his brief.

Mr. Oliver: All right.

#### By Mr. Bruce:

Q. All right, give me the figures.

A. For 1941?

Q. For 1941, yes sir...

A. I am looking at page 904, schedule 931, statistics of rail line and operations within the state; that is, of Alabama, Item 42, passenger coaches. The car miles are 2,480,382, the sleeping and parlor car miles were 900,665. That is Item No. 43. Then one half of Item No. 47, which would be one half of 373,606. Add those figures together and divided into Item 76, passenger miles, 58,990,949.

Q. In other words, about one half?

A. I should say so.

Q. The train miles in 1942—I mean in 1941 that you had in [fol. 1671] 1942.

A. Passengers per car in 1941 are substantially less than they were in 1942.

Q. Passengers per car!

A. Passengers per car, passengers,—passenger miles per car mile.

Q. Passenger miles per car mile.

A. Passenger miles per car mile.

Q. That is it?

A. Popularly referred to as "passengers per car."

Q. I don't remember your entire exhibit. Did you have individual revenues and expenses and net income on your exhibit covering each of the lines in the Southern Region?

A. No, not by individual lines, only those operating in the state of Alabama.

Q. That is for the Alabama operations?

A. No, the system operations of the lines operating in Alabama,

Q. Let's get into that annual report of yours.

A. All right.

Q. I want to know what your passenger revenues for 1941 were intrastate in Alabama.

A. I haven't that figure with me, but it is on file with the Alabama Commission.

- Q. I beg your pardon, it is right in your own report. [fol. 1672] A. Yes, but I haven't it with me.
  - Q. You have it right there? A. Oh, your report? 1941?

Q. Yes.

A. You want passenger or freight?

Q. I want passenger.

A) On intrastate traffic, \$229,617.

Q. Wait a minute, what was allocated or allotted besides that to the state of Alabama on so-called bridge traffic?

A. That is not bridge traffic, interstate traffic.

Q. Interstate traffic allotted to Alabama?

A. \$825,937.

Q. Does that make a total of \$1,055,000?

A. Five fifty four, correct.

Q. Look at the same item, keep that page out, take the same item in 1942.

A. All right, the intrastate, \$451,005, and Alabama's proportion on interstate \$2,452,268, total of \$2,903,273.

Q. Your total revenues from passenger operations in 1941 were what? That would include mail, express and other passenger, milk, dining and buffet car, parcel rooms, storage, and packages?

A. Which year do you want?

Mr. Reynolds: Has the gentleman got an exhibit he is

going to put in?

[fol. 1673] Mr. Bruce: I haven't the exhibit. I have information for my own purposes. I want this witness while I have him on the witness stand to verify these figures. I am going to offer them, yes.

Mr. Oliver: Mr. Examiner, the witness is verifying them by reference to the annual report. Mr. Bruce apparently has—the figures are prepared for his own purposes, and I assume he is going to put them in the record, I don't know.

Mr. Bruce: You betchu.

Mr. Oliver: But it seems to me we are wasting a lot of time. If he expects to cross examine really on matters that the witness has not testified to—I have not objected to it on that ground because I am willing for Mr. Tassin to give any information that is pertinent to the issues in this case, but I do think it is unfair now to everybody concerned to sit here and apparently cross examine this witness on in-

formation that he expects himself to put in this record. He

made the statement he expected to put it in.

Mr. Oliver: I resent that.

[fol 1674] Mr. Bruce: I am going to have—now, just a minute, you are not intimidating anyone at all.

Examiner Stifes: Wait a minute.

Mr. Bruce: These figures are available in this report and this is the Southern Railway's report, and it is submitted under a jurat as being correct, and it illustrates very clearly—

Examiner Stiles: As I gather from what Mr. Oliver said, the figures that you are asking this witness to testify to, and have been for some minutes are figures which you extracted from those reports, and are going to put in as an exhibit, is that correct?

Mr. Bruce: I am not going to put them in as an exhibit, no sir. I am going to have a man testify on it from the information, he is one of my employees in my department. He will testify these are figures taken from this report, which is submitted by the Respondent, the Southern Railway System.

Examiner Stiles: If you are going to put them in as direct evidence, why put them in a second time through this witness on cross examination?

Mr. Bruce: I am testing the knowledge of this witness.

Mr. Oliver: I think he has demonstrated that he can read. Now, he has been reading these figures from the report. If that is the purpose of the test, all right.

Mr. Bruce: I am not insisting that he put them in. I am [fol. 1675] giving them an opportunity to put in their own figures.

Examiner Stiles: Mr. Bruce, you know what the Commission has had to say in its rules of practice about cumulative evidence, and you know what you were going to put in, I don't, so I am going to leave it to you to decide, but I am going to ask you to bear in mind the Commission's admonition to avoid accumulative evidence. If you are

going to put something in yourself, it certainly is cumulative to have the witness put in the same thing, and then you put

it in over again.

Mr. Bruce: I had no intention of going into all of the Respondent's testimony. This man has testified for eleven respondents besides the Southern Railway. What I am trying to show here is that the information contained in this report, that they should have submitted to the Alabama Commission, and which they did not,—and that they are appearing here today with selected testimony, when, as a matter of fact, they had all of the information necessary to show the costs of operation within this state as to passenger or as to freight, and that they could show their taxes and whatnot from the very information that they themself-submitted under oath.

Examiner Stiles: But, Mr. Bruce, if they did not consider that a part of the case that they wanted to make, they had a right to make their case in the way they wished to do it. If that is a defect in the case, that is just too bad for them.

Mr. Bruce: I will withdraw the question.

[fol. 1676] Examiner Stiles: As I stated, if you will bear in mind the Commission's admonition about cumulative evidence, I will let you go on and use your own judgment, because you know what you are going to put in, and I don't.

Mr. Bruce: I think I have got a much better witness to explain this report anyway, Mr. Examiner, so I will waive

further cross examination of the witness.

Examiner Stiles: Is there any redirect examination?

Mr. Miller: I have one or two questions, if you don't mind.

#### By Mr. Miller:

Q. Will you turn to page 6 of your exhibit, No. 17!

A. Yes.

Q. I note there in lines 7 and 10, that there are only two of those railroads listed there that did not come out of the deficit in 1942. Do you know of any reason for that?

A. No, I do not, except that they have not participated in the volume of business to the same extent that the other roads have. It is the obvious reason. They have not had the same increase in volume of business.

Q. In the case of the Atlanta, Birmingham and Coast, might that not be due to a circuitous route, and not competition with more direct carriers?

- A. Well, of course it could be, it could be anything, and it could also be occasioned by the routes to military estab-[fol. 1677] lishments, camps, fields, and so forth and so on, they may not be on the route that would carry the bulk of that volume.
- Q. I notice now in these various exhibits you do not go into the first three months of 1943. In particular I am interested in the figures on pages 5, 10, 11 and 16. Will it be too much to ask you to furnish the figures for, say, for example, the first three months of 1943, or even later?

A. On page 5 we could not furnish information as to the passenger deficit, because that is computed at the end of the year.

Q. I see.

A. So for that reason we could not furnish that information for the three months. Now, what is the next page?

Q. Ten.

A. Page 10. The information can be furnished.

Q. And the same thing I believe is also true—I am not so much interested in 11, but I am particularly interested in 16, which of course is a reflection of some of the other figures.

A. On page 16, the only ratio that I can furnish for the first three months of 1943 is the total ratio. We haven't the split between passenger and freight. That is made at the close of each year.

Mr. Miller: I see. I would not be particularly interested in that then. If that is the case, I don't believe there is any [fol. 1678] object in asking the witness to supply the information if it is not separated to any greater extent than he has given it, so I have no further questions.

Examiner Stiles: Is there any redirect examination?

Mr. Oliver: I have nothing further on redirect. I would like to offer Exhibit 17 of Witness Tassin.

Examiner Stiles: Exhibit 17 is received in evidence.

(Exhibit 17, Witness Tassin, received in evidence.)

Examiner Stiles: You. are excused.

(Witness excused.)

Mr. Oliver: Mr. Kennedy, will you come around, please, sir!

WILLIAM F. KENNEDY was sworn and testified as follows:

Direct examination.

# By Mr. Oliver:

Q. Mr. Kennedy, state your name for the reporter, please?

A. William F. Kennedy, Assistant Comptroller, Louisville & Nashville Railroad Company, Louisville, Kentucky.

Q. How long have you been Assistant Comptroller of the L&N Railroad?

A. I have been Assistant Comptroller of the L&N since about 1926, and I have been in the employ of the accounting department of the L&N for over 30 years.

Q. You furnished to Mr. Tassin, did you not, the figures [fol. 1679] appearing opposite line 13 on page 4 of the ex-

hibit which has been identified as No. 17!

A. Yes, sir, that is correct.

Q. Are those forecasts of loss accurate to the best of your ability?

A. They are.

Q. Will you explain just how you arrived at the fore-

casted loss in revenue, please?

A. We originally received the request to furnish this data through the traffic department of the L&N, accompanied by an explanation of the manner in which the Southern Railway had computed similar information. They advised us that they had tested the matter, and had found that the month of April, 1942, in their opinion was fairly representative, as regards a separation of the total intrastate revenue as between that which would be subject to the proposed increases, and that which would not be so subject.

We conducted a similar test for the month of April, 1942, and found that the amount subject to the increase was approximately 92 per cent of the total Alabama intrastate revenue. We therefore applied that percentage to all of the subsequent months and carried it out to the month of March,

1943.

Examiner Stiles: That is you applied that to the total Alabama intrastate revenue?

The Witness: That is correct, yes, sir. We thereafter [fol. 1680] determined the percentage of loss that would be

involved by an actual analysis of the different classes of tickets under which the traffic moved in April, 1942.

We found that percentage, including Pullman traffic, that was subject to the increase, to be 32.57 per cent, in other words, if the proposed rates were to go into effect, the revenues would have been increased by that percentage.

That percentage was thereafter applied to each of the months after March, 1943. The aggregates produced the

losses that appear on Mr. Tassin's exhibit, line 13.

Mr. Oliver: You may cross examine.

Cross-examination.

#### By Mr. Bruce:

Q. You say you made a test of the month of April, 1942?

A. That is correct, yes, sir.

Q. How did you make that test, Mr. Kennedy!

A. Why we have the conductor's reports that come in currently enclosing all of the tickets honored on trains. The men went right through the tickets and classified them according to the class of the ticket, determined the effect of the proposed increase on each class of ticket and worked out this composite picture, which as I stated before was a factor of 32.57 per cent, including Pullman tickets.

Q. Did you segregate the furloughed movement?

A. The furloughed movement is one of those that is not

[fol. 1681] subject to the increase, and is thrown out.

Q. Did you figure the military movement, the party military movement moving under Government tickets on the rate which would be less than 2.2 cents per mile?

A. We had no occasion to segregate that. We put that

in the pot as being affected by the increase in rates.

Q. In other words, the increase on the military movement would be the same as the increase on the civilian passenger movement?

A. Relatively, yes. You understand we have a figure here which we start out with as the intrastate revenue in certain months. That includes the military traffic. We found that the portion of that which would be affected in April was 92 per cent. We found the increase on the whole business would be 32 per cent. We therefore applied the 32 per cent.

Q. Does the L&N Railroad have land grant rates?

A. Yes.

Q. In Alabama!

A. On the main lines only, not on the branch lines.

Q. On that movement is the rate 50 per cent of the going rates plus the 5 per cent discount?

A. That is correct.

Q. And therefore the increase would not be the same, would it, on the military movement, as it would be on civilian passenger traffic?

[fol. 1682] A. No, sir. It still would be relatively the

same, in a lesser amount.

Q. How did you arrive at the net loss? Is that a net loss or an operating loss?

A. That is the loss in the gross revenue, that is the total

loss, it would be the loss.

Q. How did you deduct your expenses to arrive at your expenses?

A. Expenses don't enter into the question at all.

Q. Didn't you have any expenses in the movement?

A. There would be no expense—I would put it this way, there would be no expense—I will put this way, there would be no expense that arises from the mere fact that you propose to increase the rate. There is no increased expense involved in that whatsoever.

Q. But if you did handle the traffic, there would have been

expenses, would there not?

A. We are going to handle the same traffic and increase the rate.

Mr. Bruce: I am afraid to ask this witness anything about his revenues in Alabama.

· The Witness: You need not be afraid, I will answer you.

### By Mr. Bruce:

Q. What?

A. I say you need not be afraid, I'll answer you.

Q. Do you have them?

A. Intrastate in Alabama?

[fol. 1683] Q. Yes, sir.

A. Yes, I have them.

Q. For the L&N Railroad?

A. For the L&N Railroad.

Q. What was your operating revenue for 1941 pertaining to passenger movements in Alabama?

A: Intrastate now you have in mind?

Q. Intrastate, including so-called allocated, interstate allocation?

A. I am sorry, I haven't got 1941, I have got 1942 here.

Q. Have you got 1942?

A. Yes, I have 1942, starting with the month of March, running from March, 1942, to March, 1943.

Q. What was that?

A. Twelve months ended February 28, 1943, it amounted to \$1,202,390.

Q. That is intrastate alone?

A. Yes, sir.

Q. What was the bridge traffic, I mean what was the allocation?

A. Interstate assigned to Alabama, I don't have that figure. It is in the Alabama report. The correct figure is in the Alabama report.

Q. All right, that's all I have, unless you want to go into your own report. If you want to go into that to get the [fol. 1684] figures, I will be glad to have you do so?

A. I don't want the figures.

Mr. Bruce: All right.

Examiner Stiles: Mr. Kennedy, I was curious as to why the L&N shows so much greater loss than the Southern System, when their mileage is less than the L&N—the Southern System mileage. Could you give any key as to that?

The Witness: Yes, sir. It is true that the Southern mileage, including the AGS, is only slightly different from the L&N. The difference there however lies in the fact that the L&N intrastate revenue in Alabama is so much greater than, relatively, than the Southern Railway. For example here—

Examiner Stiles: My question goes to why that should be.
The Witness: Well, I don't know, I couldn't tell you.

Examiner Stiles: Did you have more commutation traffic on your road?

The Witness: No, sir, we have no special commutation traffic in Alabama that would cause that. Our tariffs are just along similar lines. It is what you might call "run of mine" intrastate passenger traffic. We have no special rate traffic or anything of that kind. We just do more business than they do intrastate.

Mr. Reynolds: You serve all of the large cities of Alabama like Birmingham, Montgomery, Montgomery and Mobile, do you not?

The Witness: That is right.

[fol. 1685] Mr. Bruce: Doesn't the Southern?

Mr. Oliver: They don't serve Montgomery. They do serve Birmingham and Mobile.

Examiner Stiles: That is all.

(Witness excused.)

Mr. Reynolds: I would like to ask Mr. Bruce if he cares to examine the accounting witnesses of any of the other Respondents:

Mr. Bruce: No, I have got all the other information I

need out of this thing (indicating).

Mr. Reynolds: In view of that, Mr. Examiner, I am going to tell the accounting witnesses of the roads that I represent that they may be excused.

Examiner Stiles: There is no one here that wants to examine any of the other accounting witnesses is there! Is that correct?

(Ye response.)

Examiner Stiles: You may excuse all of those witnesses.

Mr. Lott: I assume that applies to the Gulf, Mobile &
Ohio accounting witness also, who is here present?

Examiner Stiles: Apparently it applies to all of the Respondent carriers.

Mr. Lott: Thank you, sir.

Mr. Bruce: I might warn counsel that I am going to place in the record figures on operating costs, and that I am [fol. 1686] going to have certain information that I am going to furnish the Commission with in this record as to your revenues in Alabama, and what not.

Mr. Oliver: So far as I am personally concerned, Mr.

Bruce-you need not put this on the record.

Examiner Stiles: Suspend the record.

(Discussion was had off the record.)

Mr. Oliver: Now, Mr. Examiner, that completes our presentation.

Examiner Stiles: All right, we will take a brief recess.

(A short recess was taken.)

Examiner Stiles: Let's come to order. Mr. Bruce, will you call your witness?

Mr. Bruce: Mr. Examiner, may I call witness Waldrop,

please !

[fol. 1687] W. W. Waldrop was sworn and testified as follows:

Direct examination.

#### By Mr. Bruce:

Q. State your name and address, please? .

A. W. W. Waldrop.

Q. Spell that for the Examiner.

- A. W-a-l-d-r-o-p; inspector, Alabama Public Service Commission, Montgomery, Alabama.
  - Q. Where do you live, Mr. Waldrop?
  - A. I live at Millport, Lamar County.

Q. Whom are you employed by?

- A. Alabama Public Service Commission.
- Q. In what capacity?

A. Inspector.

Q. What are your duties?

- A. Well, they are generally in the following up of complaints, inspecting buses and trains, making investigations on various utilities. There is quite a category of work that I am called on to do.
- Q. About three weeks ago were you instructed to make certain investigations about the passenger trains in Alabama that you have had occasion to ride on, and to inspect, in connection with the discharge of your duties?

A. I was.

Q. Have you made such inspection?

A: I have.

[fol. 1688] Q. Have you segregated your inspections as to railroads?

- A. At your suggestion,—I beg your pardon; as to which?
- Q. As to railroads; and do you have them as to dates?

A. As to dates, yes.

Q. Do you have a copy of your inspection report which you submit to the Commission in your possession at this time?

A. I do.

Q. Proceed and tell the Commission or the Examiner what you found on the trains, starting with the first date that you made an inspection, as regards the load on these

passenger trains in Alabama?

A. Well, I was instructed in my regular routine of duties to check the traffic on the various trains and buses that I might have occasion to ride doing that routine work, to check them as to the number of passengers aboard, the number that had to stand, and the number that might be left at various places, that couldn't get aboard this mode of transportation.

And I have checked more or less the trains I had to ride all during the month of June, and I believe my first check would indicate I rode an L. & N. Railroad train to Mobile,

Alabama.

Q. From where?

A. From Montgomery to Mobile.

Q. On what date?

A. That was on 6/1/43. This train consisted of eight [fol. 1689] cars, eight passenger cars, of 80 persons capacity. And I made two checks, one between Montgomery and Flomaton, and one between Flomaton and Mobile.

Apparently we unloaded about as many at Flomaton as we took on; we had practically an even load along there. We had 783 passengers, 143 standing approximately all that distance.

Q. That is between Montgomery and Mobile?

A. Between Montgomery and Mobile.

Q. Was this inspection made in the regular course of your duties? You didn't select that particular train, did you, Mr. Waldrop?

A. How is that?

Q. You didn't select that particular train, did you?

A. No, no, I had to go to Mobile on other business.

Q. And you made an inspection en route?

A. I did.

Q. What is your next inspection?

A. Next, I came back from Mobile. I rode the train out of Mobile, the L. & N., over the same route, coming back.

Q. Do you have the number of the trains?

A. One is No. 1 and the other is No. 4.

Q. Which was the first train that you made an inspection of?

A. The one to Mobile is No. 1, and No. 4 is coming back to Montgomery.

Q. State what you found on train No. 4,

[fol. 1690] A. Well, from Mobile to Montgomery, the vestibules, the aisles and the smokers and all were full. We had 840 passengers on my last check between Georgiana and Montgomery.

Q. How many were standing?

A. 640—about 200 people, 640 would have been the capacity, about 80 to the car, with 8 cars.

Q. On what date did you run from Mobile to Mont-

gomery?

A. That was on the second.

Q. The next day?

A. Yes sir.

Q. That was on the L. & N. also?

A. The L. & N. also, yes sir.

Q. All right.

A. My next train was the G. M. & O., to Tuscaloosa.

Q. From where?

A. From Montgomery to Tuscaloosa. That is No. 116.

Q. What date was that?

A. They have a local train there, that has a coach and a car. They have one white passenger coach and one combination coach, and they were full, but comfortably seated on this particular train at this time. That was on the 5th, 6/5th.

Q. Was that a Diesel operation?

A. That train leaves here at 6:45.

Q. That was a Diesel operation?

A. Yes sir.

[fol. 1691] Q. And the next investigation you made was when?

A. My next one was from Millport to Birmingham, on the 6/11th. That was train No. 11.

Q. On what line?

A. Southern Railway from Columbus, Mississippi, to Birmingham. That is also a local run. They had three

cars at the time, local.

I rode that train from Birmingham to Columbus—I beg your pardon if I said Columbus to Birmingham. There were three cars local, and they were full to their capacity out of Birmingham, but as they go on down, that was local traffic, and they thinned out considerably. When I got to Millport there was plenty of room.

Q. What was the next investigation that you made?

A. Next I caught a midnight train out of Demopolis, Frisco from Demopolis to Atmore. I left Demopolis at 2 o'clock. Now on that train they had a few seats at Demopolis. They had a few seats in Atmore. None were standing. But passengers and conductors on the road told me that they were standing out to Aliceville, out of Columbus, Mississippi. This night train is a local train and goes into Florida, across by Atmore. I didn't ride when they had them standing. They were comfortably seated at the time I was on it. That date was the 6/18th.

Mr. Oliver: That was June 18th? The Witness: Yes.

## [fol. 1692] By Mr. Bruce:

Q. Will you continue?

A. On the 6/20th I rode the Central of Georgia from Montgomery to Savannah.

Q. From where?

A. I rode that to Opelika.

Q. State what you found?

A. I found three coaches, and the white people were seated. There were two standing in the colored coach.

Q. What is that train number?

A. No. 16,

Q. State your next inspection?

A. Well, I next rode the Atlantic Coast Line, from Brundinge to Montgomery. That was the 6/23rd.

Mr. Reynolds: What are those points? The Witness: Brundidge, Alabama.

Mr. Bruce: To Montgomery.

Mr. Reynolds: Brundidge from Montgomery?

A. Brundidge to Montgomery.

### By Mr. Bruce:

Q. Will you state the date?

A. 6/23rd.

Q. All right, proceed. What did you find on that train?

A. I found it was a local train, No. 189, and it was loaded, but all could be seated. There was always somebody up

walking around, but there was a seat here and there that could have been occupied that would take care of the crowd [fol. 1693] and give them seats.

Q. Continue with your next inspection?

A. I then rode the G. M. & O. from Tuscaloosa to Montgomery, train 109. And after you pass Tuscaloosa,—I boarded it at Reform. And that train has seats from—in other words the crowd out of Mississippi, and so forth, is unloaded in Tuscaloosa, always, and leaves you some seats until you get near Montgomery, that ordinarily fill the capacity. This local traffic in and out of the main points I find has considerably congested them for a distance out each time.

Q. What was the condition of the train on arrival at Montgomery?

A. Full, but none standing on this particular trip.

Mr. Lott: What was the date of that?

The Witness: What?

Mr. Lott: What was the date of that?

The Witness: 6/20/43.

Mr. Bruce: What was the next inspection?

Mr. Lott: The 20th? Mr. Bruce: 6/20/43.

Mr. Lott: That is when he was in Opelika.

Mr. Oliver: He had Montgomery to Opelika on the 6/20th.

### By Mr. Bruce:

Q. Continue. What was the next inspection?

A. On the 6/23rd I rode the Western Railway of Alabama, and left here at 6:30 p. m. and went to Opelika. All [fol. 1694] cars were full; there were some thirty people standing, but I checked the seats over the car that would practically have seated those passengers, but it would have been full at that time.

Q. Were these cars air conditioned on that particular train or not?

A. Some are. I don't know about that particular train; I didn't check that. It was a local train, and it had one Pullman and five white coaches and one Negro coach.

Q. Were the white passenger cars air conditioned; do you know, did you find out whether the white passenger cars were air conditioned?

A. No, I don't remember checking that particular thing.

Q. Continue with your next inspection.

A. That night I rode the Central of Georgia from Opelika to Columbus, Georgia. I left Opelika, due out of there at 9:45. I rode the first section of No. 10, which at that time had five Pullman cars, five day coaches, and a colored coach, three troop cars. The Pullmans were all full. The day coaches I checked front from the rear. In No. 1 and 2 they were all seated; in three there were six standing; in four there were eight standing; in five there were five standing; or fifteen standing in all on that train.

Q. Continue with the next one, and go right along.

A. The next morning, 6/24th, I rode the Central of Georgia from Columbus, Georgia back to Opelika, and the colored coach had ten seats in it; six seats in the first coach [fol. 1695] for whites. The rest of the day coaches were all full. There were five Pullman cars in all, I think, on that train.

Mr. Reynolds: Were any standing on that train?
The Witness: No sir. That is the same train I think that wrecked just out of Birmingham during that day.

# By Mr. Bruce:

Q. Continue with your next inspection.

A. I rode the Western of Alabama on the 24th, from Opelika back to Montgomery. They had all of those cars well loaded, but they were standing only in one car, and the diner I think had only two or three seats in it, which would apparently cause more than one car with some standing in it when those people got back to their seats, unless they had all been from the Pullman, and I couldn't check that; I didn't know where those diner customers were from.

Mr. Reynolds: Were any people actually standing when you checked the train?

The Witness: How is that?

Mr. Reynolds: Were any people actually standing when you checked the train?

The Witness: Eight in one coach I think that I mentioned there.

#### By Mr. Bruce:

Q. The next one.

A. Next I rode the G. M. & O. again on the 24th. They were full, but were comfortably seated.

LAN JUL

Q. Where from and to?

[fol. 1696] A. From Birmingham—or Montgomery to Reform.

Q. Continue.

A. On the 6/27th I rode the Southern train from Millport to Birmingham. There were plenty of seats when I boarded the train, and the cars filled up and at Parish they took on another car, and I found them all seated after that. That was Sunday morning:

I rode the Southern train No. 19 from Birmingham to Mobile that same day. They were full, but all could be seated out of Birmingham. They added a car at Selma, and in meeting train No. 20 from Mobile to Birmingham, they were very—I didn't get to make a detailed check, but they were very heavily loaded, and had added two coaches at Selma.

Q. Were people standing in that train?

A. Yes sir.

Q. Very many or just a few?

A. It just looked to be about six or eight in about the two front coaches.

Q. Is that all the investigations that you made?

A. That is all the trains that I have ridden on this check.

Q. Did you make an investigation of the buses, about the same time?

A. I did.

Q. What did you find in regard to the buses?

A. I find the buses generally are loaded to the brim, [fol. 1697] and as many, or as some of the companies won't allow but fifteen to stand on a bus, though I have seen some buses of 29 capacity that I counted sixty people on them.

In various ridings we go from—we will start out of Montgomery, for instance, to Birmingham, and you will have sixteen to eighteen standing until you get as far as Wetumpka, and they unload, and then you possibly might get a seat, but before you got into Birmingham you would have them standing again. But the buses are in and out with a much heavier load than any of the local trains. Now the through trains and the trains going to larger points are standing at all times.

Q. There are practically altogether local trains that you checked?

A. Yes.

Q. You didn't check any streamliners?

A. No sir, I don't ride the streamliners.

Q. And you didn't make any investigation of other

through trains, excepting the local trains?

A. The local trains. I did this in my regular routine of work. Most of it has come in places going to the smaller towns, instead of to the larger towns.

Q. You don't travel on week ends, do you?

A. No sir, except last Sunday, I rode the Southern trains Sunday.

[fol. 1698] Q. All of your investigations were made during the week, were they?

A. Mid-week, most of them.

Q. And all during mid-week?

A. Yes sir.

Q. Do you have anything to add! You have in your possession bus investigations?

A. Yes sir.

Q. You have also a written record on bus investigations, do you?

A. Yes sir.

Mr. Bruce: That is all. You may cross examine?

Mr. Oliver: I have no questions.

Mr. Reynolds: I want to ask you one question.

The Witness: All right sir.

Cross-examination.

## By Mr. Reynolds:

Q. I understood you to testify that on the 20th of June, which was Sunday, that you rode the Central of Georgia

from Montgomery to Opelika.

A. No, I did not. I was in Montgomery. If I said I rode that train I was in error. I had this memorandum book, and I have made a memorandum of each instance. On Sunday the 20th I didn't leave Montgomery, I checked those trains out of the station at Montgomery, and checked the bus out the same way to get some Sunday traffic on my [fol. 1699] bus schedule. About four o'clock I went down to the depot.

Q. What Central of Georgia train, if any, did you check

out of Montgomery on Sunday the 20th?

A. That was the one going—it didn't go to Opelika, it went the other way, because I rode the train that I checked to Opelika.

Q. The Central of Georgia doesn't run from Mont-

gomery to Opelika, does it?

A. No, the Western does. The Central went towards Troy. I was standing talking to the conductor and checked that train when they went out. I don't know my geography very well on those routes, as to where they run.

Q. When did you check the train, in the morning?

A. In the evening, five something.

Q. And it was going towards Troy?

A. Yes sir.

Q. What did you find?

A. They had three coaches. There were two standing in the colored coach, and the whites were all seated. That was out of Montgomery.

Q. You don't know how long that condition lasted?

A. No, I do not.

Mr. Reynolds: I have nothing further.

Mr. Lott: I have no questions.

Examiner Stiles: You are excused.

[fol. 1700] (Witness excused.)

Mr. Bruce: I will call Mr. Ohme,

CONRAD H. OHME was sworn and testified as follows:

Direct examination.

### By Mr. Bruce:

Q. State your name and address, please, Mr. Ohme.

A. Conrad H. Ohme.

Q. Spell it?

A. O-h-m-e. 1729 South 14th Avenue, Birmingham 5, Alabama. I am Public Service Inspector, for the Alabama Public Service Commission.

Q. How long have you been employed by the Commis-

sion?

A. Something over twenty years.

Q. Has that been on the same job?

A. Yes sir.

Q. Did I instruct you to make certain investigations during the month of June relative to the train loads, and the conditions on these trains?

A. On May 24th you instructed me that in my routine inspections, in addition to the general inspection, to note if all passengers were able to get seats, and if not, actually count the number of passengers that had to stand, which I have done during that period.

Q. Go ahead.

[fol. 1701] A. Since then I have inspected 56 trains; one G. M. & O. train, one A. B. & C. train, one N. C. & St. L. train, three Illinois Central trains, two Seaboard Air Line, two Central of Georgia, five Atlantic Coast line, seven Western of Alabama, two Frisco, sixteen L. & N., two A. G. S., and fourteen Southern.

The total number of trains out of that 56 that had passengers standing were 28, and 28 of them did not have passengers standing. The total number of passengers that were standing on those 28 trains was 1097.

Now, I have it here by trains, arranged by different companies. Do you want me to give this?

Q. Yes, go ahead.

A. On June 17th I rode the G. M. & O. train from Maplesville to Montgomery. I made my inspection at Maplesville at 3:09 p. m. That was train No. 109. There was no one standing on that train.

Q. Was the train loaded?

A. Fairly well, but there were several vacant seats. On June 27th I inspected at Birmingham the A. B. & C. train, No. 23, which leaves Birmingham at 2:50 p. m. There were no passengers standing on this train.

Now they have two trains on that road, trains 22 and 23 operating in Alabama. No. 22 comes into Birmingham, and is due in Birmingham at 11:28 a. m., and 23 is due to leave [fol. 1702] there at 2:50 p. m. Those are mixed trains; in other words, they are freight trains with two passenger coaches and a baggage car attached to the rear end of the freight train. These are old wooden coaches, not air conditioned. No one was standing on this particular train.

On June 24th I rode the N. C. & St. L. train from Attalla to Gadsden. That was train No. 199. I boarded that train at Attalla and made the inspection there at 1:45 p.m. There was no one standing on that train. In fact

there weren's any passengers—I believe there was one passenger only. This is also a mixed train, having one coach, part of it for colored passengers, and part of it for white, and part of it for express and mail. It is a combination coach, old wooden coach, non air conditioned.

Q. Were you instructed to particularly make inspec-

A. On any of them as my regular duties called me.

Q. You were not to select any train?

A. That is my duty, to make these inspections, and I am constantly on the go. I just took these just as I ordinarily did.

Q. All right, proceed.

A. On May 26th I rode the Illinois Central Railroad train from Birmingham to Jasper, train No. 10. I inspected it at Jasper at 2:55 p. m. While this train was [fol. 1703] pretty well loaded, there was no one standing.

On May 26th I rode the Illinois Central train No. 9 from Jasper to Birmingham, making the inspection at Jasper at 3:32 p.m. This train was loaded, but no one standing.

On June 22nd I rode the Illinois Central train from Jasper to Birmingham, train No. 9. I made the inspection at Jasper at 3:37 p.m. There was no one standing on that train, but it was well loaded.

On June 22nd I rode the Seaboard Air Line train from Birmingham to Piedmont, Alabama, train No. 6. I inspected this train at Piedmont, at 10:10 a.m. There was no one standing on this train, and they had plenty of room. There was one coach, Seaboard Air Line coach, not air conditioned, and they had an Atlantic Coast Line coach on there that was not air conditioned, and they had a Richmond & Washington coach that was not screened and not air conditioned,

On June 22nd, the same day, I rode train No. 9 from Piedmont to Birmingham. I made the inspection at Piedmont at 10:32 a.m. There were eight passengers standing. This train had two coaches that were not air conditioned.

On June 13th, that was Sunday, I rode the Central of Georgia train from Birmingham to Childersburg. It was the first section of train No. 10. I made the inspection at Childersburg at 6:08 p. m. There were six passengers standing.

On June 13th, the same day, I rode train No. 1, Central [fol. 1704] of Georgia, from Childersburg to Birmingham, I made the inspection at Childersburg at 6:45 p. m. No one was standing on that train.

On June 14th I rode the Atlantic Coast Line train from Brundidge to Montgomery. I made the inspection at Troy. That was train No. 189. The time of the inspection was 4:33 p. m. There were fourteen people standing on that

train ..

There was one coach, No. 1078, on which the air conditioning was not working, and consequently the coach was hot. Coach No. 961 was a wooden coach, and not air conditioned.

On June 14th I rode the Atlantic Coast Line from Montgomery to Dothan. I inspected this train at Troy. That was train No. 58, and the time of the inspection was 8:20 p.m. There was no one standing on this train. It was fairly well filled, but there were some few vacant seats.

On June 15th I rode the Atlantic Coast Line train from Troy to Sprague. I made the inspection at Troy, of train No. 57 at 6:55 a.m. There were 21 people standing on that train.

On June 15th I rode the Atlantic Coast Line train from Sprague to Dothan. I made the inspection at Sprague, train No. 180, at 8:13 a.m. There was no one standing on that train, and there were considerable vacant spaces. This also had a wooden coach. In fact it was the same coach that was on the train the night before. It was coach No. 1078 that the air conditioning was not working on. [fol. 1705] And coach No. 961 was an old wooden coach, with no air conditioning equipment on it.

On June 15th I rode the Atlantic Coast Line train from Dothan to Montgomery and inspected it, at Dothan. It was train No. 189. I made the inspection at 3:57 p. m. There were sixteen passengers standing.

On June 15th I observed at Sprague the coach that runs between Sprague and Luverne, which is a wooden combination coach attached to the freight train.

On the same day, June 15th, I observed the coach that is operated in the branch line between Elba, Grimes and Abbeville, and that is an old wooden combination coach, attached to a freight train.

Q. Is that operated on a mixed train, freight train?

A. Mixed freight train, yes sir, just a wooden coach attached to the rear of the freight train.

On June 17th I rode from Montgomery to Opelika on the Western Railway of Alabama, and I made the inspection at Montgomery, train No. 36, at 7:30 p. m. There were 67 passengers standing. There was one wooden coach that was not air conditioned, coach No. 19:

On June 18th I rode from Opelika to Milstead on the Western Railway of Alabama. I made the inspection at Milstead of train No. 35, at 10:22 a.m. No one was stand-

ing on that train.

[fol. 1706] On June 18th I rode from Milstead to Opelika. I made the inspection at Milstead of train No. 32, at 10:40 a.m. No one was standing on that train.

On June 18th, on that same train, there was a non air

·conditioned coach.

Then again on June 18th I rode from Opelika to Montgomery and made the inspection at Montgomery of the Western Railway of Alabama train No. 32, the inspection being made at 4:45 p.m. and there were 30 people standing on the train.

On June 18th I rode Western Railway of Alabama from Montgomery to Opelika, and made the inspection at Montgomery of train No. 36, at 7:10 p.m., and there were 22 people standing on it.

This train carried an L. & N. coach which was not air conditioned, and also Western Railway of Alabama No. 19, a

wooden coach, that was not air conditioned.

On June 18th I rode the Western Railway of Alabama from Opelika to Montgomery, and made the inspection at Opelika, of train No. 33, at 10:53 p.m., and there were 41 standing. This train also had a wooden coach that was not air conditioned.

On June 19th I inspected Western Railway of Alabama train at Montgomery, train No. 34, at 2:50 a.m. There were

26 passengers standing.

On May 26th I made an inspection of the Frisco train at Birmingham, train 105, at 1:05 p.m. There was no one stand-[fol. 1707] ing on that train when it pulled out.

On June 22nd I rode the Frisco train from Birmingham to Jasper, and made the inspection at Birmingham, train 105,

leaving Birmingham at 1:35 p.m. There were 74 standing on that train.

On May 25th I rode from Birmingham to Calera, and made the inspection at Calera of L. & N. train No. 1, at 7:55

There were 49 passengers standing.

On May 25th I rode, L. & N. train from Calera to Birmingham, and made the inspection at Calera of train No. 2 at 9:50 a.m. There was no one standing on this train. fact, they had a good deal of vacant space.

On May 26th, at Birmingham, I inspected L. & N. train No. 2 at 12 noon. There was no one standing on this train,

and there was some vacant space.

On June 2nd I rode from Birmingham to Montgomery on the L. & N. for the purpose of making an inspection at Clanton of train No. 1 at 9:20 a.m. There were 89 passengers standing on this train.

On June 7th I rode from Birmingham to Montgomery on the L. & N. and made an inspection at Birmingham, train No. 1, at 7:55 a.m., and there were 82 passengers standing.

On June 8th I rode L. & N. train from Montgomery to Birmingham, and made the inspection at Montgomery of train No. 4 at 7:55 p.m. There were 44 standing. [fol. 1708] On June 9th I rode L. & N. train from Birming-

ham to Montgomery, made the inspection at Birmingham

of train No. 1 at 7:55 a.m. There were 53 standing.

On June 9th I rode the L. & N. train from Montgomery to Birmingham, and made the inspection at Montgomery of train No. 4, at 6:45 p.m., and there were 19 standing.

The floor of this train was very dirty. It looked like it had not been cleaned in some distance. The train came up from Mobile, and after the train left Montgomery going towards Birmingham the porter cleaned it up.

On June 14th I rode the L. & N. from Birmingham to Montgomery, made the inspection at Birmingham of train No. 1 at 7:55 a.m., and there were 27 passengers standing.

On June 19th I rode the L. & N. from Montgomery to Birmingham, made the inspection at Birmingham, train No. 98, at 5:50 a.m., and there were 125 passengers standing.

On June 21 I rode the L. & N. train from Birmingham to Montgomery, made the inspection at Birmingham of train No. 1 at 7:55 a.m., and there were 43 standing.

· On June 22nd I rode the L. & N. train from Birmingham to Athens, made the inspection at Birmingham of train No. 4,

at 9:50 p.m., and there was no one standing on that train. There were four coaches on that train that were not air conditioned at that time.

On June 23 I rode the L. & N. train from Birmingham to [fol. 1709] Decatur, or from Athens to Decatur. I made the inspection at Athens of train No. 25, at 4:57 a.m., and there were eight passengers standing. And there were three coaches that were not air conditioned on that train.

On June 23rd I rode the L. & N. train from Athens to Birmingham, and made the inspection at Decatur, train No. 3, at 1:31 p.m. There was no one standing on that train, and they had some space to spare.

On June 24th I rode the L. & N. train from Gadsden to Birmingham, and made the inspection at Gadsden of train No. 86 at 3 p.m. No one was standing on that train. They had plenty of room.

On June 25th I rode the L. & N. train from Birmingham to Montgomery, inspected it at Calera, train No. 1, at 8:46/a.m. and there were 65 passengers standing on this train.

On June 13th, which was Sunday, I rode from Birminghan to Fort Payne, on the A. G. S. Railroad, and made the inspection at Birmingham as the train left Birmingham, train No. 42, at 7:30 a.m., and there were eight passengers standing.

On June 13th I rode the A. G. S. train from Fort Payne to Birmingham, and made the inspection at Attalla of train No. 17, at 12:23 p.m., and there was no one standing on that train.

On June 10th I rode the Southern Railway from Birmingham to Wilton. I made the inspection at Wilton of train No. 19 at J2:45 p.m. There was no one standing on that [fol. 1710] train. There were a few vacant seats.

On June 10th I rode the Southern Railway from Wilton to Birmingham, and made the inspection at Aldridge, train No. 20 at 1:40 p.m.; no one was standing there and there was plenty of vacant space.

On June 11th I rode from Birmingham to Pell City, and made the inspection at Birmingham of Southern Railway train No. 40, at 9:10 a.m., and there were 40 standing.

At Birmingham they were not able to carry all the colored passengers. They left them there because the train, the colored compartment was crowded, and they left quite a few of them.

On June 11th I rode from Pell City to Birmingham, inspected the train at Pell City, Southern Railway train No. 7, at 11:40 a.m., and there were 39 passengers standing.

On June 11th Trode from Birmingham to Parish on the Southern Railway, and made the inspection at Parish of train No. 11 at 6 p.m. No one was standing on this train, but this train had a non air conditioned coach that operates between Birmingham and Sheffield, carried on train No. 11 to Parish, and there switched onto the train on the Northern Alabama Division. This coach was not air conditioned.

On June 11th I rode from Parish to Halevville, and made the inspection at Haleyville of Southern Railway train No. 2 on the Northern Alabama Division, at 6:30 p.m. No one [fol. 1711] was standing on that train. This, in addition to the other train, had this non air conditioned coach that

came from Birmingham.

On June 12th I rode Southern Railway train from Haleyville to Parish, and made the inspection at Nauvoo, train No. 1, at 7:37 a.m., and no one was standing. This also had a non air conditioned coach which carried passengers on to Birmingham, and at Parish it was switched onto train No. 16.

On June 12th I rode from Parish to Birmingham, made the inspection at Littleton, train No. 16, at 9:53 a.m.

were four passengers standing.

Now this train is an air conditioned train, except that it had this Southern Railway coach coming from Sheffield to Birmingham. It was attached to the rear of the rest of the train, which is air conditioned, but the door, rear door of the air conditioned train was locked, so that the passengers who were in this hot coach couldn't come into the other part of the train.

Q. That is the car that originated at-

A. That car originated at Sheffield, coming in on the Northern Alabama, which is part of the Southern Railway System, to Parish, and there it was switched onto thisthat was strictly an intrastate coach,—which was switched onto the Southern Railway train that comes from Columbus to Birmingham, No. 16, and the passengers in that coach; could not go into this air conditioned coach.

[fol. 1712] I did ask the flagman why they did that, why they kept that door locked, and he said to keep the passengers from running all over the train. And when I asked the conductor, he said they did that to keep the air conditioned car from getting hot. I asked him if he had any instruction from the superintendent to do that, and he said he didn't need them. That is hearsay, however.

On June 17th I rode Southern Railway train from Birmingham to Maplesville, and made the inspection at Maplesville of train No. 19, at 2:25 p.m. That was the train going to Selma and Mobile. There was no one standing on that train. They had plenty of room.

On June 23rd I rode the Southern Railway train from Decatur to Huntsville, and made the inspection at Decatur, train No. 8, at 6:30 a.m. There was no one standing on that

train.

This was also a Diesel train, with air conditioned equipment, and one coach that was not air conditioned attached to the end of the Diesel, which was hot.

On June 26th I rode from Decatur to Huntsville, and made the inspection at Decatur of Southern Railway train No. 46 at 12:30 a.m. There were 28 people standing on this train. This is a streamline train, and the seats, when a ticket is bought on that train, they are assigned to a certain seat, but on this train they had two coaches, ordinary coaches, to handle passengers who did not have assigned seats. I understand they carry that equipment for that purpose, be [fol. 1713] cause lots of people want to ride, and they can't get seats, so they had these two coaches; but even then there were 28 people standing.

And on June 26th I rode from Huntsvike to Decatur, and made the inspection at Decatur of train No. 45, Southern Railway, at 2:20 a.m., and there were 29 passengers standing. Now that is also a streamlined train, and the same condition applied to that one as it did to the other one. They had two coaches on there without reservations for passengers who didn't have reserved seats, and it was overcrowded.

On June 26th I rode Southern Railway train from Birmingham to Anniston, made the inspection at Birmingham, of train No. 40 at 8:45 a.m. No one was standing. The train was fairly crowded, but they had a few extra seats.

On June 26th I rode Southern Railway Train from Anniston to Birmingham, and made the inspection at Anniston of Train 47, at 12:47 p.m. This is a streamlined train, where the seats are reserved, and as I understand it they

carry only passengers that have reservations. That accounted for no one standing there.

I think that is all that I have.

Q. Did you make a similiar investigation of buses in the State of Alabama?

A. I did. Whenever I rode a bus I noted the conditions as to how many were standing, if any.

[fol. 1714] Q. Was all of the traveling that you did, was that all in the middle of the week?

A. No sir, it was every day in the week, they were all days in the week.

Q. How many Sundays did you inspect?

A. Two.

Q. Only two Sundays in the period that you made your investigation?

A. Yes sir.

Q. And there were Saturdays in there too?

A. Yes sir.

Q. In other words, you didn't pick any spots?

A. If I had had these in regular order—I separated them by companies—you would find that I had several trains on each day, every day of the week. I work all week.

Q. Was that in the ordinary discharge of your duties for

the Commission?

A. Yes sir.

Q. Were you instructed as to the trains to make inspections of?

A. No sir.

Q. Or what railroads?

A. No sir.

Q. Were you told at what time?

A. I was told to make inspections.

[fol. 1715] Q. Were you told at what time to make an inspection?

A. No sic.

Q. In other words, it was left to your own discretion as to what inspections you would make?

A. Yes sir. I was told that if possible,—or to get, as well as week days, to get some trains on Sunday, which I would have done anyhow, to see how they compared.

Q. You only rode two streamlined trains and that was

Decatur to Birmingham, is that right?

A. I rode-

Q. Or three.

A. Three; two streamliners between Decatur and Huntsville, and from Decatur to—back to Decatur from Huntsville; and then from Anniston to Birmingham.

Q. Was that on the Southern?

A. All three of them were on the Southern.

Q. You didn't make any trips on any of the air conditioned trains on any of the other lines?

A. No sir, I didn't have occasion to.

Q. What did you find on the buses?

A. Some buses are crowded, and sometimes they have to stand. Sometimes they are very crowded; and it is seldom that you find a bus that every seat is not taken on.

Q. That would apply generally all over Alabama, is that right?

[fol. 1716] A. Yes sir.

'Q. Did you ride any trains between camps, I mean from points where camps are located in Alabama, to large centers, on Saturday?

A. No, I couldn't say whether I rode it on Saturday.

I can look up the dates and see.

Q. Well, from your own memory.

A. No, I don't believe I rode on the Coast Line,—I don't believe that was Saturday. That passes the camp at Dothan. The camp there at Attalla, I rode that on Sunday, but there was no one standing on those trains at that time.

Q. Is that all you have? .

A. Then there are a great many between Birmingham and Columbus, they ride the Central of Georgia, but they had plenty of coaches when I was on there.

Q. In other words, you didn't get into a military movement from camps to large centers in Alabama, within your recollection?

A. No, I didn't pick out any special trip. I just took them as I came to them, and as my work called for it.

Mr. Bruce: That is all I have.

Mr. Oliver: I have no questions on the record. I would like to ask one off the record.

(Discussion was had off the record.)

Examiner Stiles: Is there any cross examination? [fol. 1717] Mr. Reynolds: I have no questions.

Examiner Stiles: You are excuesd.

(Witness excused.)

Mr. Bruce: I will call Mr. Tobias.

Examiner Stiles: We will take a brief recess.

(A short recess was taken.)

G. W. Tobias was sworn and testified as follows:

Direct examination.

## By Mr. Bruce:

Q. Please state your name?

A. G. W. Tobias, T-o-b-i-a-s.

Q. What is your address? A. 112 Terrace Avenue, Montgomery, Alabama.

Q. Mr. Tobias, who are you employed by?

A. By the State of Alabama.

Q.- In what department?

A. Department of Finance, Division of the Examiner of Accounts.

Q. How long have you been employed by the State of Alabama, Mr. Tobias?

A. Oh, since 1927, with a brief interlude.

Q. Have you been in the same department all that time?

A. No sir.

Q. How long have you been in your present position? You are an examiner, are you not, of public accounts?

A. Yes sir.

[fol. 1718] Q. How long have you been an examiner of public accounts, Mr. Tobias?

A. About nine years.

Q. Explain your duties to the Examiner.

A. Well, the duties of an examiner of accounts, public accounts for the State consists of examining and auditing records and accounts of all state and county officials, boards, commissions and so forth.

Q. Do you travel continually?

A. Yes sir.

Q. In the discharge of your duties?

A. Yes sir.

Q. Are you permitted to travel first class?

A. No sir.

Q. You are forced to travel by coach fare, are you not?

A. Yes sir.

Q. What is your experience in regard to securing a seat in going from your home in Montgomery to the various cities that you have made inspections in, and returning to

your home and to your office in Montgomery?

A. In the past twelve months I have had a series of audits in Mobile that has possibly consumed six of the twelve months. The remaining portion of the time has been spent in Southeast Alabama, Dothan and Clanton, Alabama, for the past twelve months.

[fol. 1719] Mr. Reynolds: Dothan and what?

The Witness: Dothan and Clanton. What was the question now?

### By Mr. Bruce:

Q. Have you been able to find a seat in the past twelve months; or we will just ask you to state what the condition of the trains has been? Have they been generally crowded?

A. I will say that it would be a conservative estimate to state that I have stood practically fifty per cent of all the times in my travels in the past twelve months.

Q. Recently have you been able to find a seat at all on the

trains that you rode from Mobile on?

A. I have not, not for the past three months that I have been in Mobile.

Q. What trains did you ride from Mobile, over what railroad did you ride?

A. The L. & N.

Q. Altogether the L. & N.?

A. Yes sir.

Q. When did you return home?

A. On week ends.

Q. That would be Friday and Saturday?

A. Well, it would be Friday, Friday night or Saturday morning.

Q. In other words, you didn't travel Saturday after-[fol. 1720] noon,—or did you?

A. I have, yos sir. .

Q. But do you do it as a general thing, as a matter of

habit, or do you do it only occasionally?

A. No, our setup is this, that we have every other Saturday off, and we are allowed to come home Friday night every two weeks. The other week we work until Saturday noon, and if we choose to come home Saturday afternoon and return to our assignment by eight o'clock' Monday morning we may do so in our own discretion. I have found traveling conditions were so crowded that for the 'last three months I have discontinued that Saturday trip.

Q. Have you attempted to find room on buses?

A. No sir, I haven't.

Q. You don't know anything about buses?

A. No sir.

Q. Has that condition generally prevailed in your department Mr. Tobias?

A. I understand it does. I have talked to quite a few of the examiners that have been working in North Alabama, and I understand that condition does exist. I can't state from any personal experience, because I have only been in—I haven't been in North Alabama at all, except north of Montgomery to Clanton, for a period of, oh, possibly six or eight weeks last fall.

Q. You came back from Mobile I think you told me a week

[fol. 1721] ago last Friday, is that right?

A. Yes sir.

Q. What happended on the train that you came back on? Were you able to find room?

A. No.

Q. Did you stand all the way from Mobile to Montgomery on that occasion?

A. Yes sir.

Q. How far is that, over 200 miles?

A. I don't know by rail, but it is a little over 200 miles by highway; but I don't know just what the mileage is there by rail.

Q. And returning to Mobile, did the same condition prevail or not?

A. Yes sir.

Q. On Sunday night?

A. Yes sir, Sunday nights. I have ridden and stood, and talked with passengers who told me—

Mr. Reynolds: Now, we object to what the passengers told him.

By Mr. Bruce:

Q. You haven't been able to find any room yourself though?

A. No sir.

Q. For how many months? That is, from the present time back, for say many months would that apply? [fol. 1722] A. For the past three months that I have been in Mobile.

Q. Have you found a seat at all in the past three months in returning home?

A. Yes sir, I have occasionally; but very seldom.

Q. Just very seldom?

A. Yes sir. Q. That is all.

A. There has never been a trip when there weren't some people standing.

Q. In other words, if you had secured a seat there were other people standing on the train, just the same?

A. Yes sir.

Q. And that would be for the past three months?

A. Yes sir, approximately; I don't remember the exact dates now.

Q. Is the condition getting better or worse!

A. Well, I don't see very much change, if any it is worse. I will say this, my travels have been confined to week end travels, and that is heavier, I understand.

Q. But the week end would be Friday?

A. That is right.

Q. Ordinarily or Saturday morning?

A. Yes sir.

Q. You don't return home Saturday nights, do you?

A. No sir.

[fol. 1723] Q. Have you anything else to add, Mr. Tobias?

A. No sir.

Cross-examination.

By Mr. Reynolds:

Q Do you travel outside of Alabama, Mr. Tobias?

A. No sir, I don't

Q. So you don't know what the conditions are in other places do you?

A. No sir, I don't.

Q. What did you mean when you said you were not permitted to ride except in coaches?

A. I mean by that the State only defrays that much ex-

pense.

Mr. Reynolds: I see. All right, thank you. That is all.

Examiner Stiles: You are excused.

The Witness: Thank you.

(Witness excused.)

Mr. Bruce: Mr. Examiner, it is approximately 4:30 and my other witnesses will consume at least an hour and a half, from an hour to an hour and a half apiece.

Mr. Oliver: How many are there!

Mr. Bruce: I have got three other witnesses and myself yet. I have got three witnesses left, and it will take approximately four or four and a half hours with these three wit[fol. 1724] nesses.

Examiner Stiles: On direct?

Mr. Bruce: On direct. We have numerous exhibits, and I was wondering if you would permit us to adjourn, or if you would adjourn,—

Examiner Stiles: If there is that much—

Mr. Bruce: —until temorrow morning say at nine o'clock Mr. Examiner.

Examiner Stiles: If there is going to be that much on direct, it seems to me that we had better run some more tonight in order to be sure of getting through tomorrow, Mr. Bruce.

Mr. Bruce: We have only approximately a half hour left tonight.

Mr. Reynolds: Off the record.

Examiner Stiles: Suspend the record.

(Discussion was had off the record.)

J. G. BRUCE was sworn and testified as follows:

Direct examination.

The Witness: My name is J. G. Bruce. By business address is the offices of the Public Service Commission, at Montgomery, Alabama.

I am employed by the Alabama Public Service Commission as chief of the Transportation Bureau.

[fol. 1725] I have charge of matters pertaining to transportation for the Alabama Public Service Commission, and I have direction over the activities of that Bureau. I have supervision over the employees, and over the inspectors. I have charge of the records of the Commission. I supervise the tariffs on file, all changes of rates, whether under statutory provision or under less than statutory provision or authority, that comes through my office.

I have charge of all of the records of the Commission, the annual reports of carriers, and in fact we construct most of the orders of the Commission in my department, subject

to the approval of the Commission

And in the past ten months my office has issued more than 350 motor carrier orders, which granted, through these motor carriers, their operating rights within the State of Alabama.

Of these orders only two are before the Commission for

rehearing, and none are in the courts.

My experience in traffic began in 1910. In 1910 I was employed by the Butte & Superior Mining Company, of Butte, Montana, as a traffic clerk. Later on I became the surface foreman of this mining employer, this mining company, employing more than a thousand men, and I had charge of everything on the surface in this mining operation, including the handling of thousands of carloads of ore, concentrates, and various mining materials per month. I held [fol. 1726] that position until the year 1918.

In 1918 I enlisted in the army, and was in the army until the termination of the war. I enlisted as a private, and was the truckmaster of the Second Division after my arrival in France, and was discharged as a first lieutenant

of engineers after the war.

Due to injuries received in service in France I did not return to my former employment, but became connected with the Chicago, Milwaukee & St. Paul & Pacific Railroad on June 1, 1920, as a rate clerk. I continued in the employment of the Milwaukee until September 1, 1930.

Upon the termination of my services with the Milwaukee, I was traveling freight and passenger agent with a part of the states of North Dakota and South Dakota, and Montana in my territory, and was assistant to the general live-

stock agent.

During my employment with the Milwaukee I appeared as a witness before the Interstate Commerce Commission

in matters pertaining to live stock, grain and other farm products, and I appeared before various state commissions as a witness in cases which the Milwaukee Railroad had an interest in.

On September 1, 1930 I resigned and became president of the Montana Trucking Lines, which line I operated until 1934, January 1, 1934. On January 1, 1934 I sold my holdings in that line, and became traffic expert for the Montana Railroad Commission, which position I held until May [fol. 1727] 1, 1937, when I became connected with the Idaho Utilities Commission, as chief of transportation.

I held that position until I resigned to accept my present

position on August 1, 1942.

I have been licensed to practice before the Commission since 1934. I am also licensed to practice before the United States Maritime Commission, the Federal Aeronautics Commission, the State Department, United States State Department, the Federal Power Commission, and the Federal Communications Commission.

When this case came before the Commission-

Examiner Stiles: Before the Alabama Commission, you mean?

The Witness: Before the Alabama Commission, yes sir, the instant case I am speaking about at the present time; I was ordered by the Commission to make an investigation of the matters involved, and the tariffs which were filed with the Commission to become effective on December 1, 1942.

At that time the Commission had before it a petition which was filed by the Office of Price Administration, requesting the suspension of the proposed increase. Due to the fact that the petition which was before the Commission was in substance a petition before the Interstate Commerce Commission also, the Alabama Commission decided to suspend the tariffs on its own motion.

[fol. 1728] As stated before, the tariffs involved were to become effective December 1, 1942, and said tariffs named an increase in coach fares, applied in Alabama, of 33½ percent over the basic rate of 1.5 cents per mile, then in effect

in Alabama.

When the Ex Parte 148 case, the original case, Mr. Examiner, was decided, the Alabama Commission was petitioned to grant their authority to publish the same increases as granted by the Interstate Commerce Commission on

passenger fares and charges. And the Commission did grant an increase of ten per cent, which made the rates at the time of the suspension in this instant case before the Alabama Commission 1.65 cents per mile.

I am not naming the other rates that are proposed to be increased, due to the fact that they are based practically altogether upon the basic rate which is in effect generally for coach fares. We are not very much interested in the first class rate increases, through the fact that they were small, although they were also suspended.

The petition which was filed by the Office of Price Administration was attached to a letter, signed by Robert A. Nixon, Director Transportation and Public Utilities Division, Office of Price Administration, and under date of September 24, 1942. The petition requested the Alabama

Commission to suspend the proposed increase.

On November 5, 1942, the Commission entered its order suspending the tariffs naming the increases, and ordered an investigation to determine whether or not the Commission would permit the tariffs to become effective.

Said investigation was held on November 24, 1942, in

Montgomery, Alabama.

Mr. Oliver: Now might I just ask one question for clarification of the record? You said this petition of Mr. Nixon or rather of the Price Administration was filed on September 24, 1942.

The Witness: Yes sir.

Mr. Oliver: Was that the date?

The Witness: Yes sir.

Mr. Oliver: That was before the tariffs were filed.

The Witness: That was before the tariffs-before the Alabama Commission.

Mr. Oliver: I see.

The Witness: And that is the reason I explained the Commission acted on its own motion.

Mr. Oliver: I see.

The Witness: At the hearing held on November 24, 1942 before the Alabama Commission; I sat on the bench with the Commission and aided the Commission in developing the record.

After the record had been received from our official reporter, I was instructed by the Commission to make a study [fol. 1730] of the record, with a view to making certain recommendations to the Commission.

I have in my hand at this time a copy of the record which we secured from the Official Reporter of the Commission, who is also the official reporter of our Commission, and which I at this time request the Commission, Mr. Examiner, to accept as an exhibit.

Mr. Oliver: Of course you will furnish copies of it, Mr. Bruce!

The Witness: I don't think that we should be required to furnish a copy of the record to the carriers. I want to state at this time this is the first time in my experience as a practitioner and as a witness before the Commission in several hundred cases, not all of them Section 13 investigations, but at least 20 section 13 investigations, in which the carriers have not submitted as Exhibit No. 1 the record that was made before the State Commission.

Mr. Oliver: Now, Mr. Examiner, that deficiency has been supplied, and my remark was really facetious. I waive a copy of the record.

The Witness: You do? I thank you.

Examiner Stiles: Let this be marked as Exhibit No. 18 and received in evidence.

(Exhibit 18, Witness Bruce, was marked for identification, and received in evidence.)

[fol. 1731] The Witness: I at this time wish to offer Exhibits 1, 2, 3, 4, 5 and 6, which were offered by the carriers in A. P. S. C. Docket No. 8618, as exhibits in that case, Mr. Examiner, as my exhibits in this case.

Examiner Stiles: Let's identify them off the record.

What is Exhibit 19?

The Witness: Numbers 1 to-

Examiner Stiles: Let's identify them for the record. On the record. What is Exhibit 19?

The Witness: Exhibit No. 1 in that case is a copy of the order of the Commission in Ex Parte 148, Increased Rates, Fares and Charges, 1942.

. Examiner Stiles: That will be Exhibit 19.

(Exhibit 19, Witness Bruce, marked for identification.)

The Witness: Exhibit No. 2 in that proceeding is a reply of the respondents to the petition of Mr. Leon Henderson, Price Administrator of the United States, seeking

suspension of increases in certain passenger fare schedules filed to become effective October 1, 1940.

Examiner Stiles: That will be Exhibit 20.

(Exhibit 20, Witness Bruce, marked for identification.)

The Witness: Exhibit No. 3 in that proceeding is an exhibit which was headed, or which on the cover page states "In the Matter of proposed increases in passenger fares," [fol. 1732] and was introduced by witness Beight.

Examiner Stiles: That will be Exhibit 21.

(Exhibit 21, Witness Bruce, was marked for identification.)

The Witness: Exhibit 4 in that proceeding is an exhibit introduced by Witness Beight, stating "Southern Railway Company, Eight months ending August 21, 1941 and 1942, respectively."

Examiner Stiles: That will be Exhibit 22.

(Exhibit 22, Witness Bruce, was marked for identification.)

The Witness: Exhibit 5 in that proceeding, introduced by Witness Beight, states "Southern Railway Company, eight months ending August 31, 1942," and line 1 states Railway Operating Revenue.

Examiner Stiles: That will be Exhibit 23.

(Exhibit 23, Witness Bruce, was marked for identification.)

Examiner Stiles: You are reading from the first page of each one.

The Witness: The first page, of the caption, yes sir. Exhibit No. 6 in that proceeding is captioned "Southern Railway Company passenger revenue, years 1937 to 1941, inclusive." It can be identified by the first line stating "1937, coach, \$4,990,517."

Examiner Stiles: That will be Exhibit 24.

[fol. 1733] (Exhibit 24, Witness Bruce, was marked for identification.)

The Witness: Now, I have other exhibits.

Examiner Stiles: Off the record.

(Discussion was had off the record. )

The Witness: Exhibit No. 7 in that proceeding, consisting of nine pages, was submitted by the Office of Price Administration, and by a witness whose name I don't remember, because his name is not on here, but the record will show what his name is. As a matter of fact, I will refer to the record.

Examiner Stiles: That is a set of graphs, isn't it, Mr. Bruce!

The Witness: That is Exhibit No. 7 in that proceeding, yes.

Examiner Stiles: That will be Exhibit 25.

(Exhibit 25, Witness Bruce, was marked for identification.)

Mr. Oliver: I think Early was the witness.

The Witness: Witness Early, who appeared for the Office of Price Administration, introduced Exhibit No. 25.

Examiner Stiles: No. 7 in that case.

The Witness: Yes sir.

Examiner Stiles: Do you tender those at this time?

The Witness: I tender these exhibits for the record, Mr. Examiner, with your authority.

[fol. 1734] Examiner Stiles: Exhibits 19 to 25, inclusive, are received in evidence.

(Exhibits 19 to 25, inclusive, Witness Bruce, were received in evidence.)

The Witness: Due to the fact that I do not desire to go into my voluminous testimony at this time, I will introduce an exhibit which is a statement of three pages, reproducing excerpts from decisions of the United States Supreme Court, and the Interstate Commerce Commission in cases decided by the Commission, pursuant to the provisions in Section 13, Paragraph 4 of the Interstate Commerce Act as amended.

Examiner Stiles: That will be identified as Exhibit No. 26.

(Exhibit 26, Witness Bruce, was marked for identification.)

The Witness: The cover page explains the contents of the exhibit. Page 1, in the first statement quoting the United States Supreme Court—

Mr. Reynolds: Mr. Examiner, I submit the exhibit speaks for itself.

The Witness: I wish to make some explanation. I will be very brief, Mr. Examiner.

Examiner Stiles: All right, Mr. Bruce.

The Witness: I have built my case, the evidence which I will present here, largely on the decisions which the Commission has made in similar cases, and which were affirmed [fol. 1735] by the United States Supreme Court.

Examiner Stiles: You may proceed.

The Witness: The first statement is statement quoting the United States Supreme Court, in Georgia Public Service Commission v. United States, 283 U. S. 765-74; and Florida vs. United States, 282 U. S. 194; Georgia Public Service Commission v. U. S.

The Commission reproduced those excerpts, Mr. Examiner, in 214 I. C. C. 577-584, and in 283 it is reproduced—I mean the reference is 283 U. S. 765 and 774. "When state rates are assailed on the ground that they result in undue prejudice to interstate shippers, or discrimination against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable; as it will not require the intrastate rates to be raised above a reasonable level."

Carriers have made no effort whatsoever to-

Mr. Oliver: I object to the argument, Mr. Examiner.

The Witness: All right, I will leave it out.

Mr. Oliver: Let's put it in briefs.

The Witness: The second statement is a statement quoting the United States Supreme Court in Smythe v. Ames, 169 U. S. 466. "If the action of the Commission is not simply for the removal of undue prejudice against interstate commerce as between persons or localities, and the Commission undertakes to prescribe a statewide level of [fol. 1736] intrastate rates in order to avoid an undue burden from a revenue standpoint upon the interstate carrier, there should be appropriate findings upon evidence to support an order directed to that end." And the reference on that is 169 U. S. 466-547, and 214 I. C. C. 577, 584.

The second statement—

Examiner Stiles: Mr. Bruce, if the exhibit is going to be received in evidence it will be a part of the record, and it is not necessary to read it in again.

The Witness: Then I will make reference in my testimony as I go along to these various decisions which were made by the Commission, and which were affirmed or confirmed by the Supreme Court.

Examiner Stiles: That is just as much a part of the record if we make it an exhibit as it is if you read it into the

testimony.

The Witness: With that statement from you, Mr. Examiner, I will forego further explanation, with the exception of the top quotation on page 3. I am going to make direct reference to this one there, I mean to this statement, Mr. Examiner, due to the fact it is a reproduction from the Wisconsin case in which the court found that the rates within the state, that were not at border points, that there was a grave question as to whether the Commission could regulate these intrastate rates. You see, in other words, for authority over here, intrastate rates, due to the fact that they might not in any way be involved in prejudice [fol. 1737] against interstate commerce; in other words, it brings out the fact that these carriers have not shown any exhibits, or have not shown by any exhibits where interstate commerce could be defeated.

Mr. Reynolds: That is argumentative, and I object to it,

Mr. Examiner.

Examiner Stiles: It is more a matter for your brief, Mr. Bruce. You can argue that question fully in your brief

if you wish. Do you want to suspend here?

The Witness: Mr. Examiner, I have submitted the record as an exhibit, but I think it is proper for me to explain as the traffic chief of the Alabama Commission what the Alabama Commission relied upon in that record to make up its decision on.

Mr. Oliver: I object to that. I submit that the record itself, and the Commission's order, is all that this Interstate Commerce Commission can consider as evidence in this case. Now what Mr. Bruce had in mind, or what the Alabama Commission had in mind, that is not set out in

the order, is entirely irrelevant.

Examiner Stiles: The Commission has been furnished with the record and with the order of the Commission. If you were going to say what it appeared from your introductory remarks that you were going to say, then this objection is well taken I think.

[fol. 1738] The Witness: That will force the submittal of a very complicated brief of many pages, Mr. Examiner, which might easily be saved with an explanation of the Alabama record in this record at the present time, because we will be forced to go into the record and point out what this Commission, that is the Alabama Commission, used as evidence to issue or base their order on.

Examiner Stiles: Did they issue a report with the order or not?

Mr. Bruce: Yes sir, but the report is very very brief, due to the fact the carriers there requested the Commission to make its order as soon as possible.

And there is another condition that comes about in Alabama. The suspension period of a tariff, statutory period of suspension of a tariff is sixty days in Alabama. Commission can't go beyond that sixty days in the issuance of its order or the tariff becomes effective without the authority of the Commission,-without the authority of the carriers. If the carriers would grant authority for an additional thirty days' suspension of their tariff, the Commission can go beyond the sixty days, which means that due to the fact that we depended on an official reporter, with a delay of a week or ten days before the record is received, sometims longer, due to the fact that the same reporter was hearing cases continually for the Commission under the Grandfather Clause of the Motor Carrier Act, [fol. 1739] which leaves very little time for the Commission to make an investigation and study the exhibits and the record, therefore the report in this case is not as explanatory as it could be.

Examiner Stiles: I don't think that you as an employee of the Alabama Commission could testify to what the commission members had in their mind in the decision of the case. If the report doesn't speak for itself, it appeals to me reasonable that the Commissioners themselves would have to say what influenced their minds.

The Witness: Mr. Examiner, in our particular method of preparing reports in Alabama, practically all of the reports are prepared by myself in matters pertaining to freight—

Examiner Stiles: But they are not decided by you, they are decided by the Commission.

The Witness: They are decided by the Commission, but after a discussion or upon recommendation.

Examiner Stiles: Yes.

The Witness (Continuing): From my office.

Examiner Stiles: If the carriers insist on that objection, it certainly is well taken.

Mr. Reynolds: We do insist.

Mr. Oliver: We do insist, certainly.

The Witness: Then the Examiner's ruling is that I can-

not testify on the-

[fol.1740-1743] Examiner Stiles: As to what influenced the Commission, the Alabama Public Service Commission, in reaching its decision. Their report speaks for itself, or they may speak for themselves.

The Witness: It is now five b'clock, so I will ask for an adjournment until tomorrow morning,

Examiner Stiles: Very well.

The Witness: May I offer Exhibit No. 26 in the record, Mr. Examiner?

Examiner Stiles: Exhibit No. 26 is received in evidence.

(Exhibit No. 26, Witness Bruce, was received in evidence.)

Examiner Stiles: We will adjourn until 9:30 tomorrow morning.

(Whereupon, at 5 o'clock p. m. on Tuesday, June 29th, 1943, the hearing was adjourned until 9:30 o'clock on Wednesday, June 30th, 1943.)

[fol. 1744] Offices of Alabama Public Service Commission, Montgomery, Alabama

Wednesday, June 30th, 1943.

Met, pursuant to adjournment, at 9:30 o'clock a.m.

Before Examiner C. E. Stiles

Appearances: As heretofore noted.

# **Proceedings**

Examiner Stiles: Let's come to order, please.

Mr. Bruce: Mr. Examiner, may I leave the stand and put another witness on, with the understanding I have further testimony to offer?

Examiner Stiles: Yes sir.

Mr. Bruce: I will call Mr. Norwood Johnson as my next witness.

Norwood Johnson was sworn and testified as follows:

Direct examination.

### By Mr. Bruce:

Q. State your name in full, Mr. Johnson.

A. Norwood Johnson

Q. You live in Montgomery?

A. Yes sir.

Q. Whom are you employed by?

A. The Alabama Public Service Commission.

Q. Do you have access to the Commission's records?

A. Yes sir.

[fol. 1745] Q. Are the annual reports filed by all carriers filed in your office?

A. All carriers operating in Alabama, yes sir.

Examiner Stiles: In what capacity are you employed by the Commission?

The Witness: My title is rate clerk in the Transportation

Bureau.

#### By Mr. Bruce:

Q. How long have you been employed by the Alabama Public Service Commission?

. A. A little over four and a half years.

Q. State your experience in transportation prior to that time?

A. I was employed for approximately four and a half years in the General Freight Office of the Louisville & Nashville Railroud, at Montgomery, and for over, a little over eleven years in the transportation bureau of the Chamber of Commerce in Montgomery.

Q. During all that time you were in transportation?

A. In transportation work, yes sir. .

Q. What are your duties at the present time with the Alabama Public Service Commission!

A. Well, do you mean to be rather specific?

Q. Your general duties?

A. Well, handling special permissions for short notices, claims for reparation on informal docket, checking all [fol. 1746] freight bills for the State of Alabama.

Q. That is for all departments of the State of Alabama,

you mean?

A. Yes sir, all departments.

Q. Is that all?

A. I think that would be sufficient for this purpose.

Q. Were you instructed to prepare a number of exhibits, Mr. Johnson?

A. Yes sir.

Q. To submit in this proceeding?

A. Yes sir.

Q. And have you done so?

A. Yes sir.

Q. What was the source of your information in the

preparation of these exhibits?

A. In a majority of the exhibits it was information taken from the annual reports of the petitioners on file with the Alabama Public Service Commission.

Q. By petitioners, you mean the petitioners involved in this proceeding?

A. That is right, yes sir.

Mr. Bruce: May we number the exhibits at the present time Mr. Examiner?

Examiner Stiles: Yes. 27 will be the first one.

(Exhibit 27, Witness Johnson, was marked for identification.)

### [fol. 1747] By Mr. Bruce:

Q. Proceed and explain your Exhibit No. 27, please.

A. This exhibit is a statement showing the total railway operating revenues earned in Alabama by all petitioners in this proceeding for the years of 1939 up to and including the year 1942.

Examiner Stiles: That is Exhibit 27.

The Witness: Yes sir.

#### By Mr. Bruce:

Q. Please proceed.

A. For each year it is divided into three columns. Column A is explained in the references. That should be a capital "A" in the reference, Capital A, B, and C. Column A for each year is the total actual intrastate revenue. Column B is the total of interstate revenues assigned to Alabama intrastate traffic.

Q. Is that the portion of the miles in Alabama that an interstate movement occurs over?

A. Yes, I think it is generally assigned on that basis.

Examiner Stiles: A mileage basis?

The Witness: Yes sir, on a mileage basis, of the actual

movement within the State of Alabama, of the traffic.

Mr. Bruce: It is assigned under the Commission's rules, Mr. Examiner, the interstate movement of commodities and passengers, the actual miles in movement. The Commission issued a rule to the carriers that they split the [fol. 1748] interstate destination of shipments destined to the state and originating in the state for the number of miles that the shipment travels within the state.

Examiner Stiles: How about those passing through the

state; you have that in item 3, too?

Mr. Bruce: That will be the same way, yes sir. We will show you how it is assigned in the report. And these reports are purchased from the Commission and sent to the carriers for filling out and filing with the Commission.

The Witness: For the L. & N. Railroad, for instance,

they show revenue-

Mr. Bruce: Here is the balance sheet here, and here is the item we are talking about now (indicating).

Examiner Stiles: All right.

Mr. Bruce: If you notice, the report is divided into state, statistics.

#### By Mr. Bruce:

Q. What is Column C?

A. Column C is a total of the railway operating revenue earned within Alabama.

Q. That includes Columns A and B!

A. Yes, that is the total of Columns A and B. You will notice that some of the columns A and B are blank, or rather they have a reference mark. That is because the carriers did not segregate the intrastate traffic as to the actual intrastate revenue and that assigned to intrastate revenue.

[fol. 1749] Q. The first year is 1939?

A. Yes sir; and of course the same basis of the same apportionment in totals carry through into 1942.

Q. In the last column, after 1942, you show figures in

revenue; increase 1942 over 1939?

A. Yes sir, that is the increase.

Q. Will you state what that is for each carrier, and the percentage?

A. You mean the increase for each carrier, and the percentage?

Q. Yes sir.

A. Well, for the Alabama Great Southern the increase in revenue for 1942 over 1939 was \$10,185,485, an increase of 157.1 per cent.

Mr. Oliver: Mr. Examiner, do you think it is necessary to read that into the record?

Examiner Stiles: The illustration you have given is sufficiently descriptive of the entire column, I think.

Mr. Bruce: The total increase, just so long as he has explained it for one carrier, I am going to ask him to state what the total increase is in 1942 over 1939, in dollars and cents, for all carriers.

A. \$71,153,930.

By Mr. Bruce:

Q. What is the percentage?

A. That is the percentage,—not an average of the per-[fol. 1750] centages for each individual carrier, but the percentage of the totals for 1939, as compared with 1942.

Q. The percentage of the totals for 1939 as compared with 1942, is that that 141 you show?

A. 141.7 per cent.

Mr. Reynolds: As a matter of arithmetic, it is 41 per cent, instead of 141 per cent, isn't it? In other words, seventy-one million is 40 per cent greater than fifty million, not 141 per cent.

Mr. Bruce: The increase he is talking about, 1939, at the present time, the increase represents the difference between \$50,197,403 in 1931, and \$121,351,000.

Mr. Reynolds: Excuse me. I looked at the wrong column of figures.

Mr. Bruce: Are you straightened out now?

Mr. Reynolds: Yes.

#### By Mr. Bruce:

- Q. That explains the first sheet?
- A. Yes sir, that is right.
- Q. Explain the next exhibit, No. 28.

(Exhibit No. 28, witness Johnson was marked for identification.)

A. This exhibit is a statement showing the passenger operating revenues, and revenues from mail, express and milk, earned in Alabama by petitioners in this proceeding for the years 1939 up to and including 1942. This one is [fol. 1751] also separated as the previous exhibit was.

Column A shows of course the revenues earned within Alabama, actual revenue, and Column B, being that appor-

tioned to Alabama; and Column C is the total.

Q. That is for the years 1939, 1940, 1941 and 1942?

A. Yes sir, that is correct. This shows only—take for instance, under Alabama Great Southern, it shows only the passenger revenue, the revenue derived from mail, the revenue derived from express, and the revenue derived from milk, which is handled in passenger service.

Q. What is the total revenue in 1939 for all petitioners

in Alabama?

A. 1939!

Q. Yes, 1939.

A. \$6,096,930.

Q. What is the total passenger revenue for 1942, your Column C?

A. \$21,643,872.

Q. And that represents an increase in dollars of how much for all carriers?

A. A total increase of \$15,546,942.

Q. And what percentage does that represent?

A. 255 per cent increase in 1942 over 1939.

Q. That is passenger and allied services?

A. Yes sir.

[fol. 1752] Q. Explain your Exhibit No. 29.

(Exhibit No. 29, Witness Johnson, was marked for identification.)

A. This exhibit is a statement showing the total railway passenger operating revenues earned by petitioners in this proceeding within the State of Alabama on intrastate and interstate traffic for the years, 1939 to and including 1942.

This exhibit shows as I stated the passenger operating revenues as shown in the reports for the petitioners on file with the Commission. And it is largely for the purpose of showing the progression of 1940 over 1939, and 1941 over 1940 and 1942 over 1941.

Q. Take the Alabama Great Southern and explain that.

A. In 1939 their passenger operating revenues were \$481,375. In 1940 they were \$548,838. In 1941 it increased to \$1,078,090 and in 1942 it increased to \$2,552,609, showing a percentage increase for 1940 over 1939 of 14 per cent, 1941 over 1940 of 96.4 per cent, 1942 over 1941, 136.80 per cent.

The total for all carriers for 1939 is \$3,095,858, in 1940 \$4,308,987, 1941 \$6,618,191, 1942 \$18,520,330. The percentage increase in 1940 over 1939 was 10.3 per cent.

Q. That is for all carriers?\_

A. For the total revenues of all carriers.

Q. All right.

A. The percentage of increase in 1941 over 1940 was 53.6 per cent, 1942 over 1941 it was 179.8 per cent increase. In [fol. 1753] other words, this differs from previous exhibits in that we have shown the separate years, as I stated; whereas, the others show the increase 1942 over 1939.

Q. What is your authority?

A. The annual reports of the petitioners, on file with the Alabama Commission.

Q. Explain your Exhibit No. 30.

(Exhibit No. 30, Witness Johnson, was marked for identification.)

A. This shows the operating freight revenues earned by petitioners in this proceeding within the State of Alabama on interstate and intrastate traffic for the years 1939 to and including 1941.

Q. Does that include actual revenue?

A. Actual intrastate revenue, and that portion of interstate revenue assigned to Alabama intrastate.

Q. The figures represent the total of the two?

A. That is right, yes sir.

Mr. Burkett: Mr. Johnson, shouldn't that be 1942, that heading of the exhibit?

Mr. Bruce: Yes, that should be.

The Witness: That is correct, yes sir.

By Mr. Bruce:

Q. The last year, "including 1941" should be 1942, in the caption.

A. Yes, in the caption.

[fol. 1754] Q. Explain for the Alabama Great Southern

and give me the totals.

A. For the Alabama Great Southern, their operating freight revenues for the year 1939 were \$5,620,487, for 1940 they were \$5,998,517, for 1941 \$7,802,710, and for 1942 \$13,415,035. The percentage of increase in 1940 over 1939 was 6.7, in 1941 over 1940 30% increase, percentage of increase 1942 over 1941 71.9 per cent.

Q. Give me the totals?

A. 1939, \$42,877,828.

Q. That is for all carriers?

A. All carriers involved in this proceeding. For 1940 it was \$48,386,672, for 1941 \$67,032,346, and for 1942 it was \$96,837,092. An increase in percentage, 1940 over 1939, 12.8; 1941 over 1940, 38.5; 1942 over 1941, 44.5.

Q. And you have some explanatory references there.

Do you want any explanation of that, Mr. Counsel?

A. I think I might explain it very simply. It is just when the G. M. & N. and the M. & O. consolidated into the G. M. & O., and of course we had to show them separately.

Q. Explain Exhibit No. 31.

(Exhibit No. 31, Witness Johnson, was marked for identification.)

A. This exhibit is a statement showing the one way, present rail coach fares and bus fares, and proposed rail coach fares between Montgomery and Birmingham, Alabama, and various points in Alabama, and does not include [fol. 1755] the Federal transportation tax.

Q. Go ahead.

A. We will take from Birmingham, or between Birmingham and Demopolis. The rail distance is 155 miles. That is the rail fare making distance, producing a face at present of \$2.60, and the highway distance is 139 miles, with a fare of \$2.05. The proposed rail coach fare is \$3.41, or an

increase in proposed rail coach fare over the present bus far- of \$1.36.

Q. Did you use Birmingham due to the fact that Birmingham is one of the principal points in the State of Alabama in making your illustration?

A. Yes sir, there is quite a bit of traffic undoubtedly mov-

ing in and out.

Q. These points that you show fares to and from, to Birmingham and from Birmingham, that is between Birmingham and these points, are they representative points in Northern Alabama, Mr. Johnson?

A. Yes sir, I think you could term them as representa-

tive points in various directions.

Q. They were not selected for some particular purpose, I take it?

-A. Oh no, just selected from the map.

Q. What is the second section?

A. Those are the same kind of comparisons between [fol. 1756] Montgomery, Alabama and various points in Alabama. For instance, between Montgomery, Alabama, and Dothan, the rail coach fare based on a distance of 120 miles produces a rate of \$2.00. The highway distance is 113 miles, and the fare by bus is \$1.90. The proposed rail coach fare over present bus fare would be a difference of 74 cents.

On page two of that exhibit the authorities for the rates are shown.

Q. Explain your Exhibit No. 32.

(Exhibit No. 32, Witness Johnson, was marked for identification.)

A. This is a statement showing scheduled and restricted stops of various first class passenger trains for that portion operated through Alabama. You take the seven first class trains, Pan American and the Azalean, operating entirely over the Louisville & Nashville Railroad, the Crescent and Piedmont, operating jointly over the Western Railway of Alabama and the Louisville & Nashville, the Southerner and the Tennesseean, operating exclusively over the Southern Railway System of course these are within Alabama,—and the South Wind, operating jointly over the facilities of the Louisville & Nashville and the Atlantic Coast Line Railroad.

Q. And that shows the stops as shown in the Official Guide of the railroads, published by the Railway Publication Company, does it?

[fol. 1757] A. That is right.

Q. These are all of the stops that you were able to find in the time tables as published in the Guide, Mr. Johnston, are they?

A. That is right.

Q. Passengers living at intermediate points in Alabama—

A. I have shown all of the restrictions, or rather the stops where stops will be made, where there are some stated restrictions as to the passengers they take on or let off, as to the destination or origins, and some are flag stops.

Q. Have you shown the flag stops on this exhibit?

A. Yes sir.

Q. And the exhibit shows the actual stops and the flag stops, is that right?

A. I really don't think there is but one flag stop.

Q. That includes all classes of stops?

A. Oh, yes sir.

Q. For instance, on the Pan American, you have seven stops; is that right?

A. Yes sir.

Q. And passengers living at intermediate points would not have access to that train?

A. No sir.

Q. And the same would apply to the Azalean?

A. The same is true of the Azalean, yes sir.

[fol. 1758] Q. Now the Southerner stops at four points in Alabama, does it not?

A. It has three regular stops, and one other.

Q. One flag stop?

A. It is not a flag, it stops westbound on signal to receive or discharge revenue passengers,—it is a flag stop, I beg your pardon, only on westbound traffic.

Q. The Tennesseean has six stops?

A. Yes sir.

Q. And the Louisville & Nashville South Wind has four stops has it?

A. Yes sir.

Q. Tell the Examiner where the South Wind comes into Alabama, and where it goes it out of Alabama?

A. Southbound it enters over the tracks of the L. & N. Railroad at the Tennessee-Alabama state line, north of Athens, Alabama. It then runs over the tracks of the L. & N. to Montgomery, where it is turned over to the Coast Line, and moves over its tracks to the Alabama-Georgia state line, just beyond Dothan, Alabama.

Q. It crosses the state then practically altogether north

and south?

A. Yes sir, practically; and then turns in a southeast direction after leaving Montgomery.

Q. Page two is your references?
[fol. 1759] A. Yes sir, that is correct.

Q. Have you another exhibit?

A. Yes sir.

Mr. Bruce: May this be identified as Exhibit No. 33, Mr. Examiner?

Examiner Stiles: Yes, the reporter will so identify it, as Exhibit No. 33.

(Exhibit No. 33, Witness Johnson, was marked for identification.)

#### By Mr. Bruce:

Q. Explain that exhibit, Mr. Johnson.

A. Page 1 is a cover page. This exhibit is a statement showing Alabama operating revenues and expenses, related to passenger and allied services, as reported in annual reports of petitioners for the years 1941 and 1942. It includes operating revenues and expenses on Alabama intrastate passenger traffic, actual and assigned.

Q. And the authority is quoted there?

A. As I stated, yes sir, the annual reports filed with the Commission.

Examiner Stiles: Let's see if I understand that. Do they take the total expense for the system, and divide that as between interstate—I mean as between Alabama traffic and that outside of Alabama, or on what basis do they divide it?

The Witness: It is on the same basis as that used in [fol. 1760] arriving at an assignment of the freight revenue. It is a little bit difficult to answer that exactly, Mr. Examiner, because some of them fail to show how they arrive at it.

Examiner Stiles: Is it on car miles or passenger miles, or what?

The Witness: Passenger miles, on passengers. Examiner Stiles: And freight miles on freight?

The Witness: Generally.

Examiner Stiles: Passenger miles on passengers?

The Witnes: As operated within the state. That is what some of them do show. It is somewhat similar to arriving at the basis for dividing the freight revenue.

Mr. Bruce: I wonder if you wouldn't like to look at the annual report? Here are the allied services here, Mr. Examiner (indicating).

Examiner Stiles: Suspend the record.

(Discussion was had off the record.)

Mr. Tassin: With respect to the Alabama Great Southern and the Southern Railway, their direct expenses are actual, as between the states. Indirect expenses are apportioned over the states on appropriate bases derived from the basic statistics.

Mr. Bruce: Is the formula which you use in arriving at such expenses, apportionment of such expenses, is that

supplied by the Commission?

[fol. 1761] Mr. Tassin: No. We take the actual figures that can be actually or directly assigned, and those figures that cannot be directly assigned and must be apportioned, there are several bases of apportionment, and we use the most appropriate in apportioning the general expenses over the several states we operate in.

Examiner Stiles: In other words, on some items would that be on a ton mile basis, and on others would it be a car-

mile basis?

Mr. Tassin: A car mile basis.

Examiner Stiles: And on others a locomotive mile basis

would be used? .

Mr. Tassin: On others it might be the accumulation of actual, relationship of actual, state 'state. We devise the one that is most appropriate to the group of general expenses that is to be apportioned.

Mr. Oliver: In order that there may be no confusion, L would like to ask Mr. Tassin just one question, and that is this: When you are speaking about apportionment of expenses to Alabama——

Mr. Tassin: Yes.

Mr. Oliver: -you apply those expenses to the handling of both interstate and intrastate commerce in Alabama, do you not?

Mr. Tassin: Oh yes.

[fol. 1762] Mr. Oliver: You don't undertake to separate as between the expenses of handling intrastate commerce in Alabama, and the expense of handling interstate?

Mr. Tassin: No. As I stated yesterday on the stand, intrastate and interstate are handled together, in the same trains, and over the same roads, so we make no breakdown of costs as between interstate and intrastate, but merely as between state lines.

The Witness! You use the same basis of freight revenue and expense as for passenger revenue?

Mr. Tassin: Yes sir.

Mr. Bruce: Counsel, you don't dispute the figures in your own report, do you!

Mr. Oliver: Oh, absolutely not.

### By Mr. Bruce:

Q. Explain your first page of your Exhibit No. 33, Mr. Johnson, and state to the Examiner how you arrive at the figures that you have for 1941 and 1942 on the Alabama Great Southern Railroad.

A. This statement first shows the revenue for the years 1941 and 1942, derived from the following classes of railway operating revenue: Passengers, baggage, mail, express, other passenger train, milk, dining and buffet, parcel room,—it should be parcel room and storage for baggage.

Examiner Stiles: Let's suspend the record. (Discussion was had off the record).

[fol. 1763] Q. Now, give the total of the passenger reve-

nue and allied services?

A. For 1941, the total for account of the Alabama Great

A. For 1941, the total for account of the Alabama Great Southern was \$1,505,762.

Q. All right.

A. In 1942 it was \$3,156,247. Now the expenses are those as shown by the petitioner in its annual reports.

Q. State what page number. .

A. The totals are shown on page 707 of each report for the years 1941 and 1942. They reflect the expenses related solely to passenger and allied services. Q. As shown by the carriers!

A. As shown by the carriers, which include numerous items.

·Q. State a few of those items?

A. The captions would be first, maintenance of way and structure.

- Q. And what is the page number where these expenses start?
  - A. Page No. 702 of each report.

Q. What is the last page number?

A. I gave that as 707. It is continued; those pages inclusive.

Q. State the various captions.

A. As stated, I will give the first one, maintenance of way and structures, second, maintenance of equipment, third, traffic, 4th transportation-rail line, fifth is blank; it [fol. 1764] relates only to warterline transportation. And sixth, miscellaneous operations, and seventh, general. The total of expenses for the year 1941 related solely to passenger and allied services—

Q. For the Alabama Great Southern Railroad?

A. Yes sir, still for the Alabama Great Southern Railroad—\$983,824. Now the expenses related in common to both freight service and passenger and allied services, and the same general classifications would apply to that as apply to expenses related solely to passenger and allied services.

That total for the year 1941 was \$239,079, or a total expense, both related solely to passenger and allied services and that apportioned to passenger and allied services was

\$1,222,903.

Q. Now that is operating expenses is it?

A. That is operating expenses. The operating revenues for the year 1941 amounted to \$1,505,762, and by subtracting the operating expenses of \$1,222,903, gives a net operating revenue of \$282,859.

Q. That doesn't include taxes or interest?

A. No deductions for taxes or interest.

Q. Did you use the same formula in arriving at a balance for 1942?

A. Yes sir, the same totals. The revenues for 1942 for account of the Alabama Great Southern—

[fol. 1765] Q. That is the operating revenue?

A. That is the operating revenue, passenger and allied services, total \$3,156,247. The expenses related solely to passenger and allied services, \$1,458,852, and the expenses apportioned to passenger and allied service were \$236,908, or a total of \$1,695,760. By subtracting the revenues just given, operating revenues and the operating expenses, would give a net operating revenue of \$1,406,487.

Mr. Oliver: Mr. Examiner, with the permission of counsel, I would like to ask just one question at this stage for

elarification only.

Mr. Bruce: All right.

Mr. Oliver: Mr. Johnson, on page 1 of Exhibit 33, the revenues that you show include, do they not, not only revenue from intrastate business, but the revenues allocated to Alabama for interstate business?

The Witness: Yes sir, that is right.

Mr. Oliver: And of course your expenses include all expenses of the Alabama Great Southern in the State of Alabama in the handling of both interstate and intrastate commerce, is that correct?

The Witness: As I explained, yes sir, that related solely

to the intrastate traffic.

Mr. Oliver: I beg your pardon?

The Witness: That related to solely intrastate traffic [fol. 1766] and that apportioned to passenger intrastate traffic.

Mr. Oliver: Wait just a minute. There is no separation as between interstate and intrastate commerce as to your expenses, is there?

The Witness: Yes sir.

Mr. Bruce: Let's see if there is or not. The Witness: No, I don't think so.

Mr. Bruce: Wait a minute.

The Witness: I think you are right about that.

Mr. Oliver: Let him look at his report. I want the record to be clear on it.

The Witness: This is railway operating expenses within the state.

Mr. Bruce: The expenses are segregated, expenses related solely to freight service, expenses related solely to passenger and allied services for the State of Alabama.

Mr. Oliver: That wasn't the question. I said as between interstate and intrastate commerce; it is not as between passenger and freight.

Mr. Bruce: You have in the next column, and column E and F, on the cover, expenses related in common to both freight service and passenger and allied service, apportioned to freight service, one, column E, that is Column E; apportioned to passenger and allied service, Column F,—so they are segregated.

[fol. 1767] The Witness: In other words, if I understand what Mr. Oliver is talking about, the expenses within the State of Alabama, which bear a certain relation to freight service, and certain relation to passenger service, and they are apportioned and charged to the different services.

Mr. Oliver: But there is no separation as between the handling of interstate commerce and intrastate commerce,

is there?

The Witness: Apparently not. Mr. Bruce: Off the record.

Examiner Stiles: Suspend the record.

· (Discussion was had off the record).

. Mr. Bruce: Is that all?

Mr. Oliver: That is all I have. Thank you.

Examiner Stiles: That description you have given of

page 1 is illustrative of all the other pages?

The Witness: I would like also to mention while we are on page 1 that in using the revenues from the various classes that I mentioned, we had no way of determining the revenues for instance from station, train and boat privileges. We don't know what portion of that should be credited to freight revenues and which portion should be credited to passenger revenues, but obviously some come to both. Another class is rent on buildings and other property, which in some cases amounts to quite a little volume of revenue. We had no way of determining which of that [fol. 1768] should be credited to intrastate passenger revenue, so I had to leave it out. Those two items are not included.

#### By Mr. Bruce:

Q. Now page 2 shows the Atlanta, Birmingham & Coast Railroad, does it?

A. Yes sir.

Q. How much of that line is located in the State of Alabama, do you know?

A. I can find out in a minute.

Examiner Stiles: What was that question?

(The question was read).

A. According to the annual report of the Atlanta, Birmingham & Coast Railroad for the year 1941, it shows the total mileage operated in the State of Alabama as 154.01 miles.

### By Mr. Bruce:

Q. What does it show for Georgia there?

A. For Georgia it shows a total mileage operated of 485.36 miles.

Q. A total of 639.37 miles?

A. That is correct.

Q. Therefore it is a very small or very short railroad, is it not?

A. A very small operation in Alabama, comparatively.

Q. And they show a deficit in 1941 and in 1942, is that not right?

A. Yes sir.

[fol. 1769] Q. And the deficit in 1942 is greater than it was in 1941, is it?

A. Another thing, you will also notice they don't show any revenues for other passenger, milk, dining, buffet, parcel room, storage for baggage. Of course it is possible that on account of the short mileage operated in Alabama they don't have any revenue of that kind; I don't know.

Q. Where is the terminal of this railroad, do you remember?

A. It terminates at Birmingham.

Q. What is the other terminal?

A. Brunswick, Georgia. The terminal within Alabama is at Birmingham.

Q. Where is the other terminal?

A. It runs between Birmingham, Alabama and the Alabama-Georgia state line, just beyond Roanoke, Alabama.

Q. And the other interstate terminal is Brunswick, Georgia, is that right?

A. Brunswick, Georgia, Thomasville, Georgia, and Atlanta, Georgia.

Q. Next is the Atlantic Coast Line?

A. Yes sir.

Q. Page No. 3.

A. Yes sir.

Q. Do they show a profit in 1941?

A. Yes sir.

[fol. 1770] Q. I mean a net operating revenue in 1941?

A. Yes sir, and the same is true for 1942.

Q. The Gulf, Mobile & Ohio shows a deficit also, does it not, on page 51.

A. Yes six.

Q. What are the figures there in 1941?

A. The net operating deficit?

Q. Yes.

A. \$192,506.

Q. What was it in 1942?

A. A deficit of \$75,621.

Q. And the Illinois Central has a deficit in 1941 and a profit,—or I mean a net operating revenue figure in 1942, does it?

A. That is correct.

Q. And the Louisville & Nashville now, I want you to explain that.

A. I don't think it is necessary to go back through how we arrived at the figures; just to give you the figures.

A. No, show the revenue.

A. For 1941 it showed a total passenger operating revenue of \$3,383,245. Their expenses were a total of \$3,516,264, leaving net operating deficit of \$133,019.

· However, in 1942 their revenue from passenger and allied services were \$9,477,784 and total expenses \$5,190,668, or a [fol. 1771] net operating revenue of \$4,287,116.

Mr. Bruce: May I refer to the Examiner now the exhibit submitted by Mr. Tassin, in which the Louisville & Nashville shows a considerable deficit in Alabama?

Mr. Reynolds: Not for 1942.

Mr. Bruce: 1942?

Mr. Oliver: The record will speak for itself.

Mr. Bruce: The record will speak for itself. The Examiner wanted to know about it, and I did too.

Mr. Oliver: Yes.

Mr. Bruce: We called the witness from the Louisville & Nashville to explain the so-called deficit in the Alabama intrastate operation, which amounted to I think in excess of \$300,000 in 1942, is that right, in round figures.

Mr. Oliver: Since you go into that, what the witness did explain was that—no, it was not a deficit in operation. The witness was called specifically to let Mr. Bruce question him on his loss in revenue that he claimed as a result of the difference in the rates, or in the fares rather, I should say.

Mr. Bruce: You are right.

Mr. Oliver: That's right. I just wanted to straighten out the record.

#### By Mr. Bruce:

Q. Now, the Southern Railway, they had a deficit in 1941, did they not?

A. That is right.

[fol. 1772] Q. That is on page 10 of the exhibit?

A. Yes sir.

'Q. What was their operating net revenue in 1942?

A. \$1,416,699, and the deficit in 1941 was \$47,238.

Q. The Atlanta, Birmingham & Coast Railroad showed a deficit in 1942?

A. Yes sir.

Q. And the Gulf, Mobile & Ohio showed a deficit in 1942, also?

A. Yes sir.

Q. And are these the only deficits?

A. In 1942, yes sir.

Q. In operating revenue in 1942?

A. Yes sir.

Q. Now this exhibit, the authorities, all of the figures on this exhibit that you have were secured from the annual reports of the cariers, and you have these annual reports here with you in the room?

A. Yes sir.

Mr. Bruce: Do you want to look at any of these reports, Mr. Counsel?

Mr. Oliver: No indeed, not at the moment certainly. Did you tender the witness for cross examination?

Mr. Bruce: The witness is your witness.

Examiner Stiles: Cross examine,

#### [fol. 1773] Cross-examination.

#### By Mr. Oliver:

Q. Mr. Johnson, turn to your exhibit No. 27, please sir.

A. Yes sir.

Q. As I understand it your Exhibit 27 covers earnings from both passenger and freight, is that correct?

A. Yes sir, total railway operating revenue.

Q. And the earnings there included or there shown cover both intrastate revenue and the portion of interstate revenue which has been allocated to Alabama?

Mr. Bruce: That is shown in the exhibit; it speaks for itself.

A. That is correct, yes sir.

## By Mr. Oliver:

Q. Now, Mr. Johnson, isn't it a fact that the Alabama Great Southern and Southern Railway Company, while they did not separate as between the intrastate revenue and the interstate revenue assigned to Alabama, that they do make the separation as between passenger and freight?

A. Yes sir, that is correct.

Q. Just one other question on that exhibit. For the year 1942 you show no separation as between intrastate revenue and interstate revenue assigned to Alabama, do you? As I recall it, yesterday Mr. Tassin read from your annual report the actual figures—

A. How is that?

[fol. 1774] Mr. Oliver: Just a moment.—Off the record. Examiner Stiles: Suspend the record.

(Discussion was had off the record.)

Q. At least Mr. Tassin showed the bulk of revenue, a separation as to the bulk of revenue, didn't he?

A. Who is that, Mr. Tassin?

Q. Yes; you were present when he testified, weren't you?

A. I don't recall that.

Q. From your annual report the separation can be determined for the bulk of the revenue shown in Column C, can it not, Mr. Johnson?

A. You mean to separate it as between freight traffic and passenger traffic?

Q No, as between intrastate revenue and the revenue on interstate, which has been assigned to Alabama?

A. Oh yes, I have another exhibit that will show that, and separate it on interstate and intrastate traffic for passenger and freight service, if that is what you want.

Q. All right, thank you.

Mr. Bruce: State in the record what exhibit that is, what number it is."

The Witness: It is Exhibit No. 29.

### By Mr. Oliver:

Q. Exhibit 28 shows, does it not, both the intrastate revenue and the interstate revenue from passengers, mail, express, and milk, assigned to Alabama?

[fol. 1775] A. Yes sir, that is right,—I said Exhibit 29. That shows the total railway passenger operating revenues, where the first item under each carrier in Exhibit 28 shows the actual pasenger revenue, and how it is assigned to intrastate traffic and interstate traffic. I think that is what you had in mind a while ago.

Q. Now your Exhibit 29 I believe shows in the title that it includes both interstate and intrastate commerce?

A. Total, yes sir.

Mr. Bruce: Every one of the exhibits show that, Mr. Examiner.

Mr. Oliver: No, I'm sorry; that particular one does, but some of them don't.

Mr. Bruce: Well, the reference does then.

- Q. Now on Exhibit 31, Mr. Johnson, you have a column showing the increase in proposed coach fares over present bus fares, and you use as an illustration the fares from Birmingham to Demopolis, and stated that your exhibit shows that the increase or proposed increase in the rail rate would result in an increase of \$1.36 over the present bus fare.
  - A. Yes sir, that is correct.
  - Q. Now, the present rail rate is 55 cents over the present bus rate, isn't it?
- A. Yes sir.
- Q. So that the increase will be 81 cents over the present [fol. 1776] rail rate?
  - A. Yes.
- . Q. And if the rate is established, the difference between the bus rate or the bus fare and the rail fare will be \$1.38.
  - A. That is right.
- Q. Now on Exhibit 32, you haven't undertaken to show anything except certain limited trains, have you?
- A. Yes sir, what are termed as limited or streamliners in most cases, like the Southerner and the Tennessean.

Q. Doesn't an intrastate passenger in Alabama have the same opportunity to board these trains that an interstate passenger does? You referred to the fact that a passenger in Alabama could board the Southerner of the Southern Railway System at only four points.

A. That is right.

Q. Now that applies to interstate passengers as well as to intrastate passengers, doesn't it?

A. Of course.

Q. Now just one question on Exhibit 33, as to the title page. The last sentence in the heading there is "includes operating revenues and expenses on Alabama intrastate passenger traffic, actual and assigned."

A. Yes sir.

Q. That includes not only the intrastate but the interstate revenue allocated to Alabama, doesn't it?

[fol. 1777] Mr. Bruce: Yes it does.

The Witness: I am sure it does.

Mr. Bruce: My witness stated that.

# By Mr. Oliver:

Q. The title I think is just a little misleading. It says "including"

A. Revenues and expenses on Alabama intrastate passenger traffic, actual and assigned.

Mr. Bruce: Actual and assigned.

The Witness: Well, actually apportioned and assigned.

# By Mr. Oliver: .

Q. The heading might properly be changed to read "Includes operating revenues and expenses on Alabama intrastate and interstate passenger traffic, actual and assigned," couldn't it!

A. Alabama interstate traffic, yes sir, as long as that is mentioned I think it is all right. Of course it couldn't be Alabama interstate traffic. If you want to include interstate it should be shown that it is what is apportioned or assigned to Alabama.

Mr. Bruce: I think the exhibit has been explained sufficiently that the Examiner knows what it is about. I refuse to amend the caption. Mr. Oliver: It is perfectly all right. I don't care whether it is amended or not, just so the record shows the facts about it. That is all that I have from this witness at this time.

[fol. 1778] Mr. Reynolds: I want to ask him one or two questions.

# . By Mr. Reynolds:

Q. Are you, as the rate clerk of the Alabama Commission, opposed to the railroads operating in Alabama earning a net operating revenue?

Mr. Bruce: I refuse to allow—I object. The witness is an employee of the Commission. He can't state the position of the Commission.

Examiner Stiles: Objection sustained.

#### By Mr. Reynolds:

Q. Well, are you opposed to the railroads operating in Alabama earning a net operating revenue?

Mr. Bruce: The same objection.

Examiner Stiles: Objection sustained.

# By Mr. Reynolds:

Q. Is there anything unusual about limited trains stopping at only the larger points?

A. No sir, it is not. It is very unusual that—passengers.

at smaller points can't get the benefit of it.

Q. Any time a limited train stops only at the larger points, the passenger at a smaller place has to go to one of the places at which it does stop in order to board it?

A. That is correct.

Q. That condition exists not only in Alabama, but in other states, doesn't it?

A. I should imagine so.

Q. And you said a while ago I think that there is nothing unusual about that

[fol. 1779] A. A streamliner stopping at larger points?

Q. Only at the larger points; all limited trains stop only at the larger points?

A. That is right; you are correct about that, they don't

make stops at local stations.

Q. On your Exhibit 31, do you contend that the coach fare should be made with relation, the railroad coach fare, should be made with relation to the bus fare?

Mr. Bruce: I object.

A. I would not.

Mr. Bruce: The witness has stated what is in the tariff of the carriers. He doesn't know why the bus fares are lower. That is a matter for the buses to testify about.

Mr. Reynolds. He put the exhibit in. I can certainly inquire as to the purpose of the showing, and that is what

I am doing.

Examiner Stiles: It went further than that.

By Mr. Reynolds:

Q. What is the purpose of Exhibit No. 31 Mr. Johnson?
A. Simply to show the actual present rail coach fares and the present bus fares, and what the proposed increase in

the present bus fares, and what the proposed increase in the rail coach fare would be over the present bus fare; just what we have on file

what we have on file.

Q. Do you contend that there is any fixed relationship between the existing railroad coach fares and the existing [fol. 1780] bus fares at the present time?

A. No sir.

Q. Do you contend that there should be?

Mr. Bruce: I object to that question.

Mr. Reynolds: I think that is a proper question. What's wrong with it? He just said he objected, without giving any reason.

Examiner Stiles: This witness is not a policy-making official.

Mr. Reynolds: Well, he is speaking for a policy-making body.

Mr. Bruce: No.

Mr. Reynolds: He is the only person they put up to speak

for them on this matter:

Examiner Stiles: I think it is quite different from the case of the traffic man of a railroad, who is one of those who makes the rates for the railroad, where this is a rate clerk of the Alabama Commission. I think the objection is well taken. I sustain the the objection.

Mr. Reynolds: Very well, I won't press it.

## By Mr. Reynolds:

Q. Now the coach fares on railroad trains that you show under the heading "Proposed rail coach fares," they are on the same basis as coach fares now in effect over certain railroads operating in the State of Alabama, are they not? [fol. 1781] A. Under the proposed rail coach fares?

Q. Yes sir. Certain railroads in Alabama have coach

fares today on the same basis?

A. Oh yes, yes sir, that is right.

Mr. Reynolds: I think that is all.

Examiner Stiles: Is there any redirect?

Redirect examination.

# By Mr. Bruce:

Q. Mr. Johnson, when you made up Exhibit No. 31, you were told what I desired to develop in that exhibit, were you not?

A. That is right.

Q. Were you told that I wanted to show what would occur if the suspended rates were approved by the Commission and became effective?

A. That is right.

Q: And the relationship between the bus and the so-called coach fares of the railroads; is that right?

A. That is correct:

Q. That is true of every one of your exhibits, that you were given a purpose for it by me?

A. Simply to compile the information you desired to ex-

hibit, yes sir.

Mr. Bruce: That is all I have.

Examiner Stiles: Do you wish to tender the exhibits now?

Mr. Bruce: Yes.

[fol. 1782] Examiner Stiles: Very well.

Mr. Bruce: May I submit in the record the exhibits, Mr. Examiner?

Examiner Stiles: Exhibits 27 to 33 inclusive are received in evidence.

(Exhibits Nos. 27 to 33 inclusive, Witness Johnson, were received in evidence.)

Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: We will take a short recess.

(A short recess was taken.)

Examiner Stiles: Let's come to order.

Mr. Bruce: Mr. Examiner, I will call Mr. Mohr.

9

JACOB MOHR was sworn and testified as follows:

Direct examination.

## By Mr. Bruce:

Q. Please state your name in full.

A. Jacob Mohr.

Q. How do you spell that?

A. J-a-c-o-b M-o-h-ry

Q. And you live in Montgomery?

A. Yes.

Q. Are you employed by the Alabama Public Service Commission at present?

A. By the Alabama Public Service Commission.

[fol. 1783] Q. What is your title?

A. Senior accountant.

Q. How long have you been employed by the State of Alabama?

A. Since 1932.

Q. Has all of your employment been in accounting with the State!

A. All of it with the State of Alabama, yes.

Q. What was your experience prior to your employment with the State of Alabama?

A. I was accountant, cost accountant, and office manager for a construction company, Bosworth-Smith Company of Montgomery, Alabama, and C. C. and F. R. Smith Con-

struction, Company, Montgomery, Alabama.

Q. For how many years? A. That has been over-all since 1928.

Q. Have you prepared certain exhibits?,

A. Yes.

Q., Explain your Exhibit No. 34.

(Exhibit No. 34, Witness Mohr, was identified for the record.)

A. Exhibit No. 34 is a statement showing the revenues and expenses and net railway operating income for the three months period ending March 1943, and 1942. This will be March 31, if you want to go to that extent. And they cover the Southern District.

[fol. 1784] Q. And have you used only these carriers, have you shown the figures only for these carriers that are petitioners in this proceeding on this exhibit?

A. That is correct.

Q. So it does not include the entire Southern District?

A. The Southern District figures for the petitioning carriers. The authority for these—I beg your pardon.

Q. Proceed. What is the authority?

A. The authority for these figures is the publication of the Association of American Railroads, Bureau of Railway Economics, Washington, D. C.

Q. Explain the first line of your exhibit.

A. You want that horizontal line on the Alabama Great Southern, the figures for that?

Q. Yes sir.

A. The average miles of road operated by the Alabama Great Southern is shown as 315.

Q. That is miles?

A. That is the average miles, 315. That is the freight revenue.

Examiner Stiles: I think the exhibit is fully explanatory, self-explanatory.

The Witness: I think it is self-explanatory, Mr. Examiner, yes.

#### By Mr. Bruce:

Q. Those are the figures shown on your authority, are [fol. 1785] they?

A. Yes sir.

Q. Proceed.

A. Freight revenues, accounts 101 and 121, Alabama Great Southern for the year 1943, amounted to \$4,159.025, cents lomitted.

Examiner Stiles: You mean for the first three months of 1943:

The Witness: For the first three months of 1943. For the same period in 1942 the amount was \$2,941,186. Cents have been omitted in all figures.

Passenger revenues for the first three months of 1943, accounts 102 and 122, were \$1,020,816. For the same period

in 1942 they were \$437,964.

# By Mr. Bruce:

Q. And the first period that you give figures for, that is in 1943, what is that?

A. Yes.

Q. Proceed.

A. Making a total operating revenue for the three months period in 1943 of \$5,445,005, and for the same period in 1942 \$3,581,600; with total operating expenses for the first three months of 1943 showing \$2,853,869 and for the same period in 1942 of \$2,127,926.

And, continuing, we show a net railway operating income for the first three months of 1943 of \$673,373 as against an [fol. 1786] income for the corresponding period of 1942 of \$507,251.

Q. Now, going down to the Gulf, Mobile & Ohio Railroad, give the same explanation please.

Mr. Oliver: Now, Mr. Examiner, if the explanation is going to consist of reading figures, I think we really are wasting a lot of time.

Mr. Bruce: Mr. Examiner, I have a reason for doing it. And incidentally, I think that throughout the examination of the witnesses for the carriers that I have not objected to this gentleman, Mr. Tassin, reading a mass of figures into the record in explanation of his exhibit. I think I have a right to have my witness explain the exhibit.

Mr. Oliver: So far as I am personally concerned, it is all right with me, if you want to read these figures, or if the Examiner wants to permit it. All I am going to do is to object to it at this time formally, and I think we are wasting time, and we are wasting transcript.

Mr. Reynolds: I join in that.

Mr. Gliver: I object to the witness reading the figures on an exhibit which is perfectly plain on its face.

Mr. Reynolds: I join in that objection.

A Examiner Stiles: I think the exhibit is readily understandable. It doesn't require to mysmind any explanation.

If the counsel wants the witness to comment on some certain figures in it, why he may do that.

# [fol. 1787] By Mr. Bruce:

Q. I will have you read for me the net railway operating income for the Gulf, Mobile & Ohio for the year 1943, in comparison with the year 1942, for that period in 1943 compared with the same period in 1942.

A. The net railway operating income for the first three months of 1943 of the Gulf, Mobile & Ohio Railroad shows as \$1,362,271 compared with \$796,488 in 1942, in the same

period.

Q. Then give me the same figures now for the Seaboard Air Line.

A. The net-railway operating income of the Seaboard Air Line Railway for the first three months of 1943 was \$11,-221,000 in round figures, compared with \$4,395,301 for the same period in 1942.

Q. Do all of the carriers show an increase in net railway

operating income on your Exhibit No. 34?

A. Yes, every carrier does show an increase.

Q. What is your exhibit 35, please?

(Exhibit No. 35, Witness Mohr, was marked for identification.)

Examiner Stiles: It seems to me this is an exhibit that doesn't require any explanation. It is very clear in the way it is set forth.

#### By Mr. Bruce:

Q. Is this the same class of an exhibit, Mr. Mohr?

A. Yes, except that it covers the twelve months period ending in December of 1942 and 1941.

[fol. 1788] Q. In that exhibit give me the net operating income of the Illinois Central for 1942 and for 1941.

A. Net railway operating income of the Illinois Central Railway, including the Y. & M. V., for the calendar year 1942 was \$40,957,856, as against \$25,903,251 for the calendar year 1941.

Q. The Atlantic Coast Line figures, give me those same

figures, please.,

A. The net railway operating income of the Atlantic Coast Line Railroad Company for the year 1942 was \$21,- 195,567, as compared with \$11,080,953 for the calendar year 1941.

- Q. This exhibit shows the same results for the twelve months in 1942 as Exhibit No. 34 shows for the three months period of 1942 against the three months in 1943, is that right, Mr. Mohr?
  - A. Yes, it shows an increase for every carrier.
  - Q. Explain your Exhibit No. 36.

(Exhibit No. 36, Witness Mohr, was marked for identification.)

A. My Exhibit No. 36 is a statement showing the railway operating revenues and expenses, railways of Class I in the entire United States, exclusive of switching and terminal companies.

Q. That exhibit is self-explanatory, is it not?

A. I would think so. It seems to me that it is perfectly clear.

[fol. 1789] Q. Tell me what the passenger increase was for the Class I railroads in 1942, for the first three months of 1942, in comparison with the first three months of 1943.

A. The increase in passenger revenues for the first three months of 1943 over the same period in 1942 was \$62,341,588.

Q. And that is for the twelve months, isn't it,—or for the month of March, I mean?

A. That is for the month of March. Change that please.

Q. What is it for the three months ending March 31, 1943?

A. The three months period shows an increase in passenger revenues for the first three months of 1943 over/1942 of \$170,848,032.

Q. And what percentage of increase is that?

A. It is 100.8 per cent increase.

Q. That is for the period of three months?

A. That is for a period of three months, ending March 31st.

Q. Page 2 of that exhibit is what?

A. Page 2 of Exhibit 36 outlines the amount of depreciation included.

Q. Read your caption please. Go ahead and continue.

A. The caption is the same.

Q. Yes; that is in the first page.

A. That shows the amount of depreciation included in maintenance of way and structures and equipment expenses

for the month of March and for the three months ending [fol. 1790] March 31 for the years 1943 and 1942.

Q. What are the figures?

A. The amount of depreciation for the month of March 1943 was \$26,535,985 as against \$19,695,109 for the month of March 1942. For the three months period ending March 31 in 1943 the depreciation was \$79,496,940, compared with \$56,285,336.

Mr. Bruce: Mr. Examiner, the reason that I am pointing to this particular item is due to the fact that the carriers did not originally set aside depreciation amounts for the retirement of their equipment. That is a new practice that has been permitted by the Commission. I don't remember exactly when, Mr. Tassin?

Mr. Tassin: On the main road, not equipment. It is

effective in 1943; 1945, on roads.

Mr. Bruce: I call to your attention that this is a sizeable amount that is now deducted and set aside for the retirement of equipment, and maintenance of way, and what not.

#### By Mr. Bruce:

Q. Now your page No. 3 on your exhibit Mr. Mohr is what?

A. Page 3 of Exhibit No. 36 shows the rate of return on property investments.

Q. For the twelve months?

A. For the twelve months ended March 31, and the years 1943 and 1942.

Q. State what it is in the Southern District, exclusive [fol. 1791] of the Pocahontas Region. What is the amount

of net railway operating income?

- A. The amount of net railway operating income for the twelve months ending March 31, 1943 for the Southern District, exclusive of the Pocahontas Region, was \$233,565,154. For 1942 this amount was \$142,865,761, making a rate of return for the twelve months ending March 31, 1943 of 6.88 per cent, as against a return for the twelve months ending March 1942 of 4.36 per cent.
- Q. Is the rate of return greater in the Southern District than in any other district shown in this table?

A. Yes.

Q. Explain your next exhibit, Exhibit No. 37.

(Exhibit No. 37, Witness Mohr, was marked for identification.)

A. Exhibit No. 37 is a statement showing the railway revenues and expenses, railways of Class I in the United States, exclusive of switching and terminal companies.

Mr. Bruce: I don't think that this exhibit needs any explanation, Mr. Examiner, excepting the rate of return shown on page 2. I will have my witness show what that is in the Southern District, not including the Poeahontas Region.

## By Mr. Bruce:

Q. State what that is.

A. The net railway operating income for the Southern District, exclusive of the Pocahontas Region, for the calen-[fol. 1792] dar year 1942 was \$214,151,928 as against \$138,673,395 for the calendar year 1941. These figures show a return of 6.54 per cent for the year 1942, compared with a return of 4.35 per cent for the calendar year 1941.

Q. And the average for the U.S. is what, for 1942 and

for 1941?

A. For the United States for the year 1942 the average rate of return was 5.56 per cent, compared with a return of 3.79 per cent for the year 1941.

Q. Read the note at the bottom of page 2 of Exhibit No.

37, Mr. Mohr.

Examiner Stiles: The examiner will take note of that, Mr. Bruce.

Mr. Bruce: Will you take notice of that, Mr. Examiner? Examiner Stiles: Yes.

# By Mr. Bruce:

Q. Explain your exhibit No. 38.

(Exhibit No. 38, witness Mohr, was marked for identification.)

A. Exhibit 38 is a statement showing the total operating revenues, expenses and net railway operating income for the United States by months for the years 1937 through 1942, inclusive, railways of Class I, exclusive of switching and terminal companies.

Q. The first section is total operating revenues, is it?

A. Yes. [fol. 1793] Q. Show the difference in total operating revenue for the year 1937 in comparison with the year 1942?

A. The total operating revenues for the year 1942 were \$7,466,227,054, compared with \$4,166,068,602 for the year 1937.

Q. Turn to page 2. Page 2 of the first section is total operating expenses, is it not?

A. Yes sir.

Q. Read the totals in 1937, and also the totals in 1942,

total operating expenses?

A. For the year 1942 the total operating expenses amounted to \$4,601,429,943 compared with \$3,119,064,934 for the year 1937.

Q. Give me the same figures for the same years on net

railway operating income.

A. The net railway operating income for the year 1942 was \$1,480,940,760, compared with \$590,203,925 for the year 1937.

Q. Now your page 3, is that the same as page 1, but

including the first three months of 1943?

A. That is correct, with the exception that the total calendar year based on annual reports for the years 1938 to 1941, and revised monthly reports for 1942 do not always agree with the sum of the monthly totals. The figures represent the same thing, but if you check them carefully you will find that they are not always the same figures.

Q. I will ask you to read for me the figures under 1938 for the month of March in total operating revenue. That

[fol. 1794] is in the first section.

A. Total operating revenues for the month of March 1938 were \$283,017,000.

Examiner Stiles: I suggest if you want to direct particular attention to the month of March that you merely state that you want the Examiner to particularly note the month of March, and the Examiner can read these figures.

Mr. Bruce: The month of March, Mr. Examiner, is the last complete figures that we were able to get from the Interstate Commerce Commission, or the Association of

American Railroads.

However, since these exhibits were made, I have a sheet, Sheet N 100, showing the month of April, and I will have to testify on that sheet orally from the fact I didn't have time to prepare an exhibit on it. I want to particularly dwell on April, due to the fact the carriers used April 1942 as an example month in arriving at their so-called averages.

Examiner Stiles: All right.

Mr. Bruce: I don't think I need give you this detailed information, but I want to show you the month of March for 1943 in comparison with 1938, and the operating expenses; then we will leave that exhibit or that sheet.

## By Mr. Bruce:

Q. Will you state what the total operating revenues for the month of March 1943 were, Mr. Mohr?

A. The total operating revenues for the month of March

1943 were \$756,250,563.

[fol. 1795] Q. Put the figures for 1938 into the record.

A. The corresponding figure for the month of March 1938 is \$283,017,974.

Mr. Bruce: Mr. Examiner, the reason that I reproduced the figures in here as an exhibit is going to show the steady progress of increase, and that there has been a continuous increase in operating revenues, and that the net has correspondingly increased, and that the operating expenses have not kept pace with the net increases, or the operating revenue. It is also in percentage.

# By Mr. Bruce:

Q. Explain your page 4 of this exhibit now Mr. Mohr.

A. Page 4 of Exhibit 38 is a statement showing the operating income account for the United States for the three months' period ending March 1938 to 1943, Railways of Class I, exclusive of switching and terminal companies.

Examiner Stiles: That is another exhibit that I think is tully self-explanatory.

Mr. Bruce: With that statement from the Examiner, we will pass on to page 5.

## ·By Mr. Bruce:

Q. Page 5 is what?

A. Page 5 of Exhibit 38 is a statement showing the operating income account for the United States for the twelve

months ending December 1937 to 1942, for Railways of Class I, exclusive of switching and terminal companies.

[fol. 1796] Examiner Stiles: That too is self-explanatory.

Mr. Bruce: That is all I have

Mr. Oliver: I have no questions.

Mr. Reynolds: I just want to ask one.

Cross-examination.

# By Mr. Reynolds:

Q. I understood you to say, Mr. Mohr, in connection with your Exhibit 35 that the net railway operating income of all the carriers shown on that exhibit was greater in 1942 than it was in 1941. Did you make that statement?

A. I made that statement.

Q. I call your attention to the net railway operating income of the Louisville & Nashville Railroad for those two years, and ask you if it is not a fact that the net railway operating income of the L. & N. was less in 1942 than it was in 1943?

A. That is correct, Mr. Reynolds.

Q. The L. & N. is one of the principal lines operating in Alabama!

A. That is correct.

Mr. Reynolds: That is all.

Mr. Bruce: I offer exhibits Nos. 34 to 38, inclusive, Mr. Examiner.

Examiner Stiles: Exhibits 34 to 38 inclusive are received in evidence.

(Exhibits Nos. 34 to 38 inclusive, Witness Mohr, were received in evidence.)

[fol. 1797] Examiner Stiles: The witness is excused.

(Witness excused.)

Mr. Bruce: Mr. Examiner, I have already been sworn, on yesterday.

Examiner Stiles: Yes.

Mr. Bruce: I wish to continue my testimony.

Examiner Stiles: You may proceed.

J. G. Bruce, having been previously sworn, was recalled and testified as follows:

Direct examination (continued):

The Witness: I offer my Exhibit No. 39, which is a statement reproducing in part the report of the Commission in case No. 2650, passenger fares and surcharges, 214 ICC 188, etc.

(Exhibit No. 39, Witness Bruce, was marked for identification.)

This is the history which the Commission placed in its report, Mr. Examiner, in that case. That was up to 1936, the date on which the Commission made its decision in 1936, March 31, 1936. And therefore, the explanation as given by Witness Aiken as to the history of the Southern passenger rates from 1937 to the present time is a correct continuation of the history which this Commission placed in its report.

I have reproduced this portion of the Commission's report due to the fact that the Southern led the way in the re-[fol. 1798] duction of passenger fares, and this history is

very complete, and it shows the reason thereof.

I call your attention particularly to the closing statement made by the Commission, as shown on page No. 5, in which the Commission stated: "This respondent feels strongly"——

Mr. Oliver: Mr. Examiner, I am going to object. It is bad enough to put this in the record, but I am not objecting to that, but I do object to the witness putting it in as an exhibit and then reading it.

The Witness: This is the strangest objection that I have listened to for a long time.

Mr. Oliver: I know; I appreciate that it would appear so to you, Mr. Bruce, but I still register the objection.

The Witness: It shows the position of the Southern Railroad in 1936, Mr. Examiner, in comparison with the petition or position of the Southern Railroad today, who has induced or who has informed other carriers in the Southern Region in reference to what should be placed in evidence in this case, in which an attempt is being made to increase these coach fares and other fares 33½ per cent.

Mr. Oliver: After the speech, I still object to the witness

reading into the record from this exhibit, and I insist on it.

Mr. Reynolds: And the statement that the Southern Railway induced other lines to participate in this case, and [fol. 1799] to put in certain evidence is just not a fact.

The Witness: I am referring now to the testimony of the witness, the financial witness, who appeared here yesterday for the L. & N. Railroad, who stated that he had received certain information, was given the month of April as an example month by the Southern Railway.

Mr. Oliver: I don't want to pursue that, but I do want

a ruling on my objection.

Examiner Stiles: The witness is simply directing particular attention to the last paragraph of this exhibit, the statement of the Commission. You want that particularly considered?

The Witness: That will do it, Mr. Examiner.

Mr. Oliver: That is perfectly all right. I think that is very nice,

The Witness: I will now offer my next exhibit.

Examiner Stiles: That will be No. 40.

(Exhibit No. 40, Witness Bruce, was marked for identification.)

The Witness: It is composed of a number of sheets which were furnished to the Alabama Public Service Commission by the Interstate Commerce Commission, or the information was furnished by the Interstate Commerce Commission.

The first sheet is a statement showing passenger traffic statistics, other than commutation, of Class I steam rail-[fol. 1800] ways in the United States, separated as between coach traffic and parlor and sleeping car traffic. It is compiled from 119 reports, representing 128 steam railways for twelve months ending with December 1942, and 1941 in comparison.

Examiner Stiles: It says for the month of December, instead of 12 months.

The Witness: Yes, sir, for the month of December.

Examiner Stiles: Instead of twelve months.

The Witness: That is correct. Now page No. 2, or the reverse of this page, shows the same information for twelve months. I am not going to dwell at all on the month of

December, but only speak but the percentage of increases which are shown in the first section, caption, United States total 1942-1941, and on the passenger revenue whole dollars in coaches.

It shows that the increase for the United States in passenger revenue, dollars, in 1942 over 1941 was 107.5 per cent change. In the Southern Region, under the same explanation the percentage of increase or change rather is 123.4. That is in coaches.

I call your particular attention, Mr. Examiner, to passenger revenue whole dollars in parlor and sleeping cars for the Southern Region. It shows a percentage of change of 146.9 there. The exhibit is very self-explanatory, and I merely place it in the record for the convenience of the [fol. 1801] Examiner, so that you won't have to refer to the Commission's records.

The next is sheet No. N 100. This sheet is placed before the Commission to substantiate the exhibits introduced by Witness Mohr, due to the fact that we did not use the Commission's figures in arriving at or in making his exhibits, but instead used the railroads' Bureau of Economics figures instead.

Examiner Stiles: That is a separate exhibit?

The Witness; No sir, this is the same exhibit.

Mr. Oliver: It is all one exhibit?

The Witness: If you will take your clips off of the exhibits, you will find these are stapled together.

Mr. Oliver: They have not been numbered.

The Witness: The sheets are numbered. For instance, if you want to, I will be glad to number them by the page.

Mr. Oliver: No. Off the record.

(Discussion was had off the record.)

Mr. Oliver: All right.

The Witness: This statement shows operating revenue and operating expenses of Class I steam railways in the United States, switching and terminal companies not included, for 12 months ending with December 1942 and 1941.

This will show the same figures that Mr. Mohr has shown in his exhibit in regards to the United States revenues on freight, passenger, mail express and allied services. The total is exactly the same, \$7,466,227,054 in 1942, and in 1941

[fol. 1802] it was \$5,346,699,998, or a percentage increase in the United States of 39.6.

At the bottom of the page I want to call your attention to a note which shows a double star, two stars, and which states, "Includes Federal Income Tax, Surtax and Excise profits tax, as follows", and it gives the amount of the taxes which the carriers have paid, and that is segregated as to districts, Mr. Examiner.

It shows that the Southern Region, exclusive of the Pocahontas District, paid last year a total of \$130,761,287 in

income and excise taxes.

I refer there to Statement No. M 213, (OS-B). On page 2 thereof, which is on the reverse of page 1, this shows passenger train performance of Class I steam railways in the United States exclusive of switching and terminal companies for 12 months ending with December 1942 and 1941.

I make particular reference to Item No. 3, for the United States, and the same item for the Southern Region. I also make reference to all of Item No. 4, for the United States and for the Southern Region; to Item No. 7 for the United States and also for the Southern Region; Item No. 10, Item No. 11, and the total at the bottom of the page, which shows the numeral ahead of it "13-03." Each of the last should be compared, United States averages, with the Southern District averages.

I next make reference to Statement No. M 150, captioned [fol. 1803] "Operating revenues and expenses, selected items for large steam railways". This includes the month of December 1942 and 1941, and in the second section shows for twelve months ending with December 1942 and 1941, in comparison. I refer you to the Southern Region, and particularly to the operating ratio shown under the caption "AA" in brackets.

The first railroad shown in the Southern Region is the Atlantic Coast Line. The operating ratio per cent for the Atlantic Coast Line for the year 1942 was 54.7. For the year 1941 it was 69.5. I will skip the Central of Georgia, for no particular reason, and go to the Gulf, Mobile & Ohio, and there in 1942 the Gulf, Mobile & Ohio had an operating ratio of 62.3 against a ratio of 68.2 in 1941.

The Louisville & Nashville Railroad is one of the heavy operators, or the heaviest operator in Alabama, and it

shows an operating ratio in 1942 of 58.7 against a ratio of 65:3 in 1941.

And the Southern had an operating ratio of 55.6 in 1942 against the ratio of 63.3 in 1941.

I next make reference to page 2 of Statement M 230 (OS-E) in brackets, and I drop down to the group of items No. 5, and I make reference to the price of coal per net ton at the mine. For the United States in 1942 it was \$2.13, and in 1941 it was \$2.02. For the Southern Region exclusive of the Pocahontas District in 1942 it was \$2.16, and in 1941 it was \$2.03.

[fol. 1804] Various fuel items are shown in there, Mr. Examiner, in this statement, in a group of items numbered 6, 7, 8 and 9, and I call these to your particular attention.

I next make reference to Statement No. M 220 (OS-D) in brackets, and on page 2 thereof. The first bracket is the United States. First I will state what the statement shows. It is revenue traffic statistics of Class I steam railways in the United States for twelve months ending with December 1942 and 1941. I call attention particularly to item No. 10, the passenger train miles, for the United States 429, 920,131 miles in 1942, and in 1941 it was 403,621,304.

Now, we will go to the same item in the Southern Region, in the bracket below the United States, and make reference to Item No. 10, which applies to the Southern Region. It shows that the passenger train miles in 1942 in Southern Region were 65,968,420 and in 1941 it was 660,575,332.

I give you these figures and make particular reference to them due to the fact the increase in passenger car miles is not very appreciable for the amount of revenue that the carriers are now receiving. It shows the cars must be much heavier loaded.

In the averages, there, Mr. Examiner, I call your attention to Items Nos. 12, 13, 14, 15-01,—and in fact to the balance of the items contained on that page in the Southern District.

[fol. 1805] I now make reference to statement No. M 125, and pages 2 and 3 thereof, which shows selected income items by regions and districts, Class I steam railways, calendar years 1942 and 1941. First, you have the net railway operating income again, the total income, the deductions, total deductions, and the net income after depreciation and amortization of defense projects.

Now the Southern District is shown in there, and below it the Pocahontas Region, and the Southern District are segregated. I make reference to the Southern Region only, not the Pocahontas District, because that is an inflated district, and we don't want to use that.

It shows that in 1942 the carriers set aside net income, after depreciation and amortization of Defense Projects for the Southern Region, 1942, \$152,723,248, against \$75,472,079 in 1941.

Examiner Stiles: Did you state that correctly? Read what the witness said.

(The record was read.)

Examiner Stiles: That is correct.

The Witness: Now I didn't go to the other column, due to the fact that this is the meat in the information, which I wish to transmit to you, Mr. Examiner, anyway.

Now, referring to the list of the carriers in here you will find the Atlantic Coast Line system, you will find the At[fol. 1806] lanta & West Point Railroad, you will find the Louisville & Nashville, and many of the carriers that are in the Southern Region who are petitioners herein, and you can see what their total income was individually so far as their system is concerned from this sheet, Mr. Examiner, Sheet No. 3.

That is all of my explanation for this exhibit, Mr. Examiner.

Examiner Stiles: The difference between the figures in the block before the last one and the last block would show the amount of depreciation and amortization for defense projects?

The Witness: Yes sir. And I am not positive about that, but I think Mr. Tassin will agree with me that the Commission permits the amortization and retirement of defense projects within five years. Isn't that right?

Mr. Tassin: That is correct.

The Witness: And that started in 1942.

Mr. Tassin: You have to obtain authorization for that, though.

The Witness: Which indicates to me that while the carriers have done a good job on behalf of the war, and so on and so forth, they are being paid for it. These added expenses which are now incurred through added facilities—

Mr. Reynolds: I object to that as argumentative.

The Witness: —are being—

[fol. 1807] Mr. Reynolds: I have an objection: I would like a ruling.

Examiner Stiles: Let me hear what the statement is.

The Witness: Will you read my statement?

(The record was read.)

The Witness: (Continuing) —taken care of by the Commission permitting the setting aside over a period of five years of sufficient money to defray the cost of these added facilities that they are furnishing at the government camps and so forth.

Mr. Reynolds: I object to it as argumentative, Mr. Ex-

aminer.

Examiner Stiles: The objection is overruled.

The Witness: I will now offer my next exhibit.

Examiner Stiles: It will be identified as Exhibit No. 41.

(Exhibit No. 41, Witness Bruce, was marked for identification.)

The Witness: It is a reproduction of a letter received——Mr. Reynolds: I object to that on the ground that it is hearsay, and its receipt in evidence deprives the respondents of their right of cross examination.

The Witness: I have the original letter, if you wish to see it.

Examiner Stiles: Suspend the record while the Examiner reads it.

(Discussion was had off the record.)

[fol. 1808] Examiner Stiles: Your objection is that it is because it is a personal letter, instead of some publication put out by the O. D. T.!

Mr. Reynolds: I further object on the ground it is irrel-

evant and immaterial.

The Witness: It is material due to the fact that the carriers have continually stated how much added revenue,—I mean added expense they had been placed to against their operations, due to military movements.

Examiner Stiles: I will overrule the objection on the last, ground that you stated; but I will have to sustain it on

the first ground.

Mr. Reynolds: Well, I continue the first one.

Examiner Stiles: What did you say? Mr. Reynolds: I press the first one.

Examiner Stiles: I will have to sustain it on that ground. It is not an official publication of the O. D. T. It is only a letter from an official of that organization, and respondent objects on the ground that he is deprived of the right of cross examination. I have to sustain that objection on that ground.

That was identified as Exhibit No. 41, but in view of the

objection it will not be received in evidence.

(Exhibit No. 41, Witness Bruce, was thereupon rejected.)

Mr. Burkett: It is still noted in the record as that exhibit, [fol. 1809] is it, Mr. Examiner?

Examiner Stiles: Yes.

Mr. Burkett: And the next one will be No. 42?

Examiner Stiles: That is correct.

The Witness: Since you have made your ruling, I will ask you if you read my letter addressed to Commissioner Eastman on page 2 thereof.

Examiner Stiles: Yes sir.

The Witness: You have read that?

Examiner Stiles: Yes sir.

The Witness: My next exhibit is No. 42.

Examiner Stiles: It will be identified as No. 42.

(Exhibit No. 42, Witness Bruce, was marked for identification.)

The Witness: It is a statement reproducing excerpts from the amendment by Congress of the Emergency Price Control Act of 1942, which said amendment was approved as of October 2, 1942 by Congress; and also excerpts from the Executive Order of the President of the United States, No. 9328, dated April 8, 1943.

The first statement, or the first excerpt rather is from the Congressional Record of the United States, and the second is,—my authority is the Executive Order of the President, which is a public document. I reproduced the amendment to the Office of Price Control Act of October [fol. 1810] 2, 1942, merely to show that the Office of Price Administration had a right to intervene, and even though the Alabama Commission did not act upon their petition, the fact remains that they were within the law to appear at least when the hearing was held.

Now the President's Executive Order, does counsel object to my reading that into the record?

Mr. Oliver: I do, yes. If you are going to read it in-

the record-

The Witness: I will make reference to it, Mr. Examiner, and I call your attention particularly to the fact that the President has practically ordered all regulatory bodies, including the state, and the Federal and municipal governments, and what not, against increases for utilities, public utilities.

Mr. Reynolds: I object to that statement.

Mr. Oliver: I object too, and I ask it be stricken from the record.

Examiner Stiles: The order speaks for itself. Mr. Oliver: Yes, the order speaks for itself.

The Witness: I will ask that I be permitted to read the statement now.

Examiner Stiles: The statement is already in the record, or will be as soon as I receive that exhibit, and I am going to receive it when you tender it, so it is not necessary to read it. It is a part of the record.

[fol. 1811] The Witness: Then I will offer my next ex-

hibit.

Examiner Stiles: No. 43.

(Exhibit No. 43, Witness Bruce, was marked for identification.)

The Witness: This is a reproduction of a statement made or rather a part of the opinion made by Hon: Joseph B. Eastman, Director, Office of Defense Transportation, and a member of the Interstate Commerce Commission in his concurring opinion in Ex Parte 148 report on further hearing, decided April 6, 1943. And my authority is Sheets 40, and 41 of the mimeographed report of the Interstate Commerce Commission. I ask the Examiner to refresh his memory. I know he has read it already, and I won't attempt to antagonize my opposing counsel.

My next exhibit is No. 44.

Examiner Stiles: It will be marked No. 44.

(Exhibit No. 44, Witness Bruce, was marked for identification.)

The Witness: It is a statement reproducing the Commission's report, heading, ICC Case No. 26550, passenger fares

and surcharges decided on February 28, 1936. This case was decided on February 28, 1936, and I call the attention of the Examiner to Findings No. 2, the experimental fare basis in the Southern and Western District found not to be unreasonable or otherwise unlawful; and that was the 1.5 cent fare.

My next exhibit is No. 45.

Examiner Stiles: Yes.

[fol. 1812] (Exhibit No. 45, Witness Bruce, was marked for identification.)

The Witness: And this is a statement reproducing in part the Commission's report and order and findings in case No. 26,575, decided March 9, 1936, captioned Georgia Intrastate fares and charges. This is a section 13 investigation, and this statement, Mr. Examiner, bears out my cross examination of several witnesses in bringing out the fact that the first class fares in Georgia are at the present time on a 2.2 basis, the same as the carriers propose to publish for coach fares in the State of Alabania; and that this fare of 2.2 cents which used to be 2 cents, but was amended by the Commission's order in Ex Parte 148 whereby they were granted a ten per cent increase, has been in force in Georgia, applying on Georgia intrastate traffic since March 9, 1936, and the Commission approved the order,-that is refused to order the Georgia Commission to amend or cancel its order in any way whatsoever.

At that time Georgia had a coach fare of 1.5 cents, and that is still in effect with the exception of the increases granted by the Commission in Ex Parte 148.

I next offer my Exhibit No. 46.

Examiner Stiles: It will be marked for identification Exhibit No. 46.

(Exhibit No. 46, Witness Bruce, was marked for identification.)

[fol. 1813] The Witness: This is a statement reproducing the condensed opinion of the United States Supreme Court in Paltimore & Ohio Southwestern Railway Company v. Settle and others, partners, under the firm name of W. H. Settle & Company.

Mr. Reynolds: I object to it on the ground it is not a proper exhibit; that is, it is not proper to reproduce in

exhibit form and offer in evidence a portion of the opinion of courts.

The Witness: I have the authority, 260 U.S. 166, and the second page, Mr. Examiner, reproduces another part of it, and I ask the Examiner to read and make reference to this decision of the United States Supreme Court.

Examiner Stiles: You are asking the Commission to rely on the original report, and this is just submitted for the

convenient reference of the Commission?

The Witness: Yes sir.

Examiner Stiles: In view of the way in which you have

tendered it, the objection is overruled.

The Witness: Page 2 thereof makes reference to a number of cases in which the Commission made a ruling,—I mean in which the Commission's orders carried out the mandate of the court in regards to the use of an interstate rate and an interstate rate—or I mean an interstate rate and an intrastate rate in combination to defeat interstate commerce rates.

[fol. 1814] My next exhibit is No. 47, and consists of eight

pages ...

Examiner Stiles: It will be No. 47.

(Exhibit No. 47, Witness Bruce, was marked for identification.)

The Witness: This is a statement showing the trend of traffic, car supply, revenues, operating expenses, for the United States and the Southern Region for the year 1942 and four months in 1943. I am not going to burden the Examiner or the record by making an explanation, excepting that I am willing to be cross examined on it.

Mr. Reynolds: Let me ask for information, is this a complete copy of the Bureau of Economics Association of American Railways, of something they got out, or is it

excerpts from something they got out, or what is it?

The Witness: It is excerpts from it. If you will look on the last page, you will see the authority, Bureau of Economics, Association of American Railways, publication entitled Railroad Data, published by the Eastern Railroad Presidents' Conference, a publication of the Bureau of Statistics, Interstate Commerce Commission,

Mr. Reynolds: Mr. Examiner, I don't think it is proper to put things of this sort in exhibit form. If have no access to these Bureau of Economics Association of American

Railways publications. I don't even know what documents he is talking about.

[fol. 1815] Mr. Oliver: Mr. Examiner, I notice on page 8 of the tendered exhibit "Bureau of Economics, Association of American Railways publication entitled Railroad Data, published by Eastern Railroad Presidents' Conference, and publications of the Bureau of Statistics, Interstate Commerce Commission." We have no way of knowing what it covers.

Examiner Stiles: It is a compilation from various sources, is that correct?

The Witness It is a compilation from various sources, and it was made in the form of a statement that I was going to read in the record.

Examiner Stiles: In other words, you would present this

as your oral testimony?

The Witness: Yes sir.

Mr. Oliver: You mean this is your testimony?

The Witness: Which I have made in exhibit form, due to the fact I anticipated you were going to make the very objections that you are making right now.

Mr. Reynolds: Do you know of these statements contained

in this proposed exhibit of your own knowledge?

The Witness: I have prepared this myself, it is my—that is from compilations. I have used the same language; I have used tables.

Mr. Reynolds: I submit, Mr. Examiner, that if the witness undertook to testify to the statements contained in this [fol. 1816] compilation, his testimony would be objectionable on the ground that he is undertaking to testify about things of which he knows nothing, and that he just simply has gone around to different compilations and gotten out a whole lot of figures and is undertaking to testify about them. Now testimony of that sort I think is clearly objectionable.

Mr. Oliver: I don't understand him yet. The witness says it is his testimony. I don't understand whether it is quotations from these several publications,

The Witness: Read the authority and you will inform yourself.

Mr. Reynolds: As I understand it is just a summary of stuff taken from three or four publications which are referred to on the bottom of page 8. I submit a witness can't testify to things that he takes from publications, and doesn't know anything about.

The Witness: How do you know that! I'm willing to stand cross examination on anything that you ask me about this thing, whether I know anything about it or not.

Examiner Stiles: I am going to reserve my ruling on your objection until I see if he can stand cross examination on the statements that are made in there. Now you may proceed, Mr. Bruce.

The Witness: I happen to have my authority with me. Volume of traffic, freight traffic in 1942 was greater——
[fol. 1817]. Examiner Stiles: Now, Mr. Bruce——

The Witness: Do you want me to read it?

Examiner Stiles: No. Have you any further testimony to offer?

The Witness: All right.

Examiner Stiles: Proceed with your other testimony. I said I would reserve my ruling on that until you are cross examined. If you can satisfy the Examiner that you are testifying from your own knowledge, why I will rule accordingly. Does that complete your testimony, Mr. Bruce?

The Witness: That completes my testimony.

Examiner Stiles: All right, respondents may cross examine.

Cross-examination.

# By Mr. Reynolds:

Q. Please refer to page 2 of your exhibit No. 47 that has been offered for identification.

A. All right.

Q. And tell me what you mean by the statement "The railroads in 1942 handled nearly 90 per cent of the increase over 1941 in total domestic freight movement and 75 per cent of the total increase in passenger travel." First, I want to know what that means.

A. The railroads in 1942 handled nearly 90 per cent of the increase over 1941 in to all domestic freight movement and 75 per cent",—That means, Mr. Counsel, that the coastal service as far as vessels is concerned is practically eliminated.

[fol. 1818] Q. How do you know that?

A. I know that; and through the fact that we have a port here in Alabama, and we know of the port shipping, what it is, and I also have appeared in cases, and I have appeared probably in more cases than you have before the Maritime Commission, and before the Commission. I have knowledge of traffic, and my qualifications when I started to testify denotes that.

Q. What does it mean; what does your statement mean?

A. I'm telling you what it means. It means the railroads, of the five mediums of transportation which are regulated by the Commission, have handled 90 per cent of the increase over 1941 in total domestic freight. Domestic freight means the freight handled within this country:

Mr. Reynolds: That language doesn't mean anything to

me. I don't understand it.

Examiner Stiles: Well, as the Examiner understands it there was a certain increase in total domestic freight movement. Of that increase the railroads handled 90 per cent, and other forms of transportation handled the other ten per cent of it.

Mr. Reynolds: Mr. Bruce, how do you know the railroads.

handled 90 per cent?

Examiner Stiles: Is that what it means, Mr. Bruce?

The Witness: Yes sir. Through the fact that the Association of American Railroads, Bureau of Railway Eco[fol. 1819] nomics in a review of railway operations in
1942, which is your own figures, that you submit to the
Bureau of Economics at Washington, D. C. issued this publication that I got that information from.

Mr. Reynolds. Let me see it.

Mr. Oliver: Let us see where that information is contained in that publication.

The Witness: Do I have to exhibit my source of information to counsel?

Examiner Sfiles: Yes.

The Witness: First I will read it in the record. Page number 16 of the pamphlet, which I have already identified. "The railroads in 1942 handled nearly 90 per cent of the increase over 1941 in total domestic freight movement, and 75 per cent of the total increase in passenger travel."

# By Mr. Reynolds:

- Q. Now, the statement on the top of that page, "about 40 per cent of the sleeping cars and 15 per cent of the coaches are now being continuously used for the movement of armed forces. Freight cars have been materially increased in number, while passenger cars have appreciably decreased in number." Where did you get that information on that?
  - A. Where is that, what page !.

Q. It is on page two, the first complete paragraph there on page 2.

A. 40 per cent of the sleeping cars and 15 per ent of the [fol. 1820] coaches are now being used. On page 10 of the pamphlet,—including nonpassenger carrying cars, and so forth and so on.

Q. I beg your pardon; I didn't understand you.

A. What?

Q. I didn't understand you.

A. On page 10 of the pamphlet which I have in my hand, which is identified in the record, Review of Railway Operations by the Association of American Railways, Bureau of Railway Economics.

Q. Let's hear what it says.

A. "About 40 per cent of the sleeping cars and 15 per cent of the coaches are now being continuously used for the movement of armed forces."

Q. All right, the next sentence. "Freight cars have been materially increased" and so forth.

A. That is in the same paragraph.

Q. Let's hear what it says. How could it possibly be true, Mr. Bruce, that passenger cars have appreciably decreased in number. How could that possibly be?

A. Because you have not constructed any cars at all: because you have retired a lot of cars.

Q. Where do you find anything to substantiate that?

A. Just a minute. I have got a table here! "Number of passenger carrying cars owned by the railroads of Class I and the Pullman Company, exclusive of dining and lounge."

[fol. 1821] Q. What are you reading from now?

A. I am reading from a reproduction from this "what-you-call-it", and I'll give you the page number.

Q. Let's see what the book says; I want to see what the book says.

A. Page No. 29, "Railway passenger traffic in terms of passenger miles broke all records." No, that's not it. It is on page No. 9, "The number of passenger carrying cars owned by railways of Class I and the Pullman Company, exclusive of lounges", and so forth and so on.

Q. Let's have the whole thing. Exclusive of what?

A. Well, this is where I start with the explanation. You are going to the tail end.

Q. I want to know what the book says. I understand all of your information has been taken from the book. Will you tell me what the book says to support the statement that freight cars have been materially increased in number, while passenger cars have been appreciably decreased in number?

A. Table 3, page 9, I had it before me all the time. I will read it out of my own copy now, but I have identified it. "Railway ownership of freight cars during the three years to October 1, 1942 show a net increase of 92,690 cars, or 5.6 per cent. However, the number of serviceable cars increased by 241,562, or 16.7 per cent." There is a table above there, named Table 3, total railroad owned freight [fol. 1822] cars, October 1, 1939, 1,643,898, and October 1, 1942, 1,736,588. Serviceable October 1, 1939, 194,890.

Q. You need not read all that. What I am interested in particularly is your statement that passenger cars have appreciably decreased in number. Where can you find anything to substantiate that?

A. I will give you the table. "Number of passenger carrying cars owned by railroads of Class I and Pullman Company, exclusive of dining and lounge cars, baggage, mail and express cars as of December 31, 1939 and January 1, 1942 is shown as coach combination, December 31, 1939, 20,825".

Q. Let me interrupt you if I may. There is nothing in there that says—

A. Wait a minute.

Q.—that passenger cars have appreciably decreased in number, is there?

A. Yes, there is.

Q. Go ahead.

A. If you will not interrupt me, I will give you all the information you want.

Q. Very well.

A. January 1, 1942, 20,329 cars, parlor cars on December 31, 1939, 900; January 1, 1942, 726; sleeping cars December 31, 1939, 6362 and January 1, 1942, 6625. "Others" 127 in 1939 and in 1941, 78, making a total on December [fol. 1823] 31, 1939 of 28,214. Now get that.

Q. All right, twenty-eight thousand and what?

A. And on January 1, 1942, 27,758.

Q. Twenty-seven what?

A. 27,758.

Q. There is nothing in that book that says passenger cars have appreciably decreased in number, is there?

A. I just read it a half dozen times then.

Q. You read me some figures which show a decrease as, I figure it of 456 cars.

A. Including non passenger carrying cars, passenger train cars in service on December 31, 1939 total 45,479, but had decreased to 44,956 cars at the beginning of 1942.

Q. What is the difference?

A. The sleeping cars had increased in number, but all other classes of passenger equipment, including coaches, had been reduced.

Q. I haven't yet four d'anything in that book, any statement that passenger cars have appreciably decreased in number. I am asking you to show me where that is stated there, and you haven't done it. That is your own language that you put in there yourself.

A. Yes, and the exact figures are from the book.

Examiner Stiles: He used his own language, but based it on the figures from the book, as I understand it.

# [fol. 1824] By Mr. Reynolds:

Q. Look on page 6, under the heading "Volume of Traffic" on your exhibit. "Opinions differ considerable" and so forth. Where did you get that statement, and whose statement is it, particularly at the beginning of the second paragraph, "I hold the opinion" and so forth. Who is "I" there?

A. I, that is me.

Mr. Peynolds: That is objectionable, Mr. Examiner.

The Witness: I have adopted the statement as my opinion there.

Mr. Reynolds: This witness hasn't given us precisely what he finds in some authentic publication.

The Witness: Well I-

Mr. Reynolds: Wait a minute. What he has done is to read a lot of books that we don't know what they are.

The Witness: Now, listen, I object to that. I've had enough out of you already, and I want to go ahead. I tell you I've stood plenty from you.

Mr. Reynolds: I'm going to say what I started out to say. He has read these books. I don't know what they are.

The Witness: You wouldn't know what they are if you read them.

Mr. Reynolds: Maybe not. That's what I think happened in the preparation of this exhibit. But anyway the witness has read the books and then drawn his own confol. 1825] clusion from the facts stated there, and he has incorporated his conclusions in this exhibit. That is clearly objectionable. He is testifying to something that he got out of some books, he has drawn his own conclusions from facts stated in those books.

Examiner Stiles: If you want the authority for the statements that he has made, you have a right to ask it. But if you mean to say that the witness can't say when he has the figures before him that this is a decrease of a certain amount, the figures show a decrease; of course he can state that.

Mr. Reynolds: I think he can say that they show a decrease, but I understood from what the witness said that he was practically copying from—that the language contained in the exhibit was practically a copy of what was contained in the book.

Examiner Stiles: I understood him to say that in many instances he has used the language of the book, and in other instances he used his own language.

Mr. Reynolds: We don't know when he is doing one, and when he is doing the other.

Mr. Burkett: Mr. Examiner, if Louight point out on page 36 of that book that has been introduced here in this hear-

ing, in the next to the last paragraph it practically quotes the same thing as is on this exhibit.

Mr. Reynolds: I'll tell you what I am willing to do

now----

[fol. 1826] Mr. Burkett: That is as I see it.

Mr. Reynolds: If Mr. Bruce will submit copies of the book, whatever it is, and indicate the parts he relies on, that will be all right with us. But a lot of this is argumentative "I hold the opinion", this, that and the other.

Examiner Stiles: Well, as a rate expert he has a right

to express his opinion.

Mr. Reynolds: He hasn't a right to argue, though, in an

exhibit, Mr. Examiner, and that is an argument.

Mr. Oliver: Mr. Examiner, Mr. Bruce apparently relies on the publication to which he has referred here—you mean I can't look at it?

The Witness: It is my data.

Mr. Oliver: I suggest that the solution of the thing would be to put in the book itself, and indicate the pages and parts of it on which he relies in compliance with the Commission's rules. I do think that the exhibit in the shape in which it is now prepared is certainly objectionable. We can't tell what it is. It is a conglomeration of figures here, supposedly taken from—

Examiner Stiles: It is objectionable unless he is prepared to give you the authority for each of these state-

ments that he makes which are statistical in nature.

The Witness: I am going to ask that-

Mr. Reynolds: A lot of it is argumentative. Let me [fol. 1827] call your attention to this: "It seems probable" on page 4, "that more than one-half of the increase was due to troop movements, men traveling while on military or naval furlough, and the like, while the remaining portion of the increase may be credited to more extensive utilization of rail service by civilians." Now that is just a guess, and an argument combined.

The Witness: It is a guess of your association. I want to read exactly the way the paragraph reads. This is on page 6.

Mr. Reynolds: Page 4.

Mr. Oliver: Off the record for just a moment.

Examiner Stiles: Suspend the record.

(Discussion was had off the record.)

The Witness: I will submit it in the record, and I will ask that one correction be made, and that is in the interest of getting through with this case.

Examiner Stiles: Now, let's see, you are going to submit this booklet that has been referred to. Let that be identi-

fied as Exhibit No. 48.

(Exhibit No. 48, Witness Bruce, was marked for identification.)

The Witness: I also wish to submit a sheet, "Railroad Data" under date of June 4, 1936, Eastern Railroads Presidents' Conference, and captioned, page 27—

Mr. Oliver: May I see that, please?

[fol. 1828] The Witness: On page 6, in the last paragraph thereof, I will ask that the—

Examiner Stiles: Just a moment. You offer this as an

exhibit?

· The Witness: Yes sir.

Mr. Oliver: Mr. Examiner, I don't want to be hypercritical about this thing, but that publication has no more weight and no more relevancy in this proceeding than the daily newspaper. It is not an official publication in any way by anybody. It shows on its face.

The Witness: Every figure shown in that sheet is con-

tained in the exhibits, and in my exhibit No.-

Examiner Stiles: Mr. Bruce, I will have to sustain the objection unless you wish to withdraw your offer of this. I say I will have to sustain the objection to this paper, "Railroad Data", unless you wish to withdraw the offer.

The Witness: No, I don't want to withdraw it.

Examiner Stiles: Let it be identified as Exhibit No. 49, and the objection to it is sustained.

(Exhibit No. 49, Witness Bruce, was marked for identification, and rejected.)

The Witness: Now, Mr. Examiner, I have made reference to the Bureau of Statistics, Interstate Commerce Commission publication. That puts me back on my exhibit No. 40, and I have got to go back into Sheet M 100.

[fol. 1829] Examiner Stiles: As I understand, some of your statistical data in Exhibit 47 is taken from your Exhibit 40?

The Witness: Yes sir, and I will submit in evidence now Sheet No. M 100, showing the operating revenues and expenses of Class I steam railroads in the United States for four months ending with April 1943 and 1942, and I am ready at this time to back up the figures in my exhibit No. 47. Now ask me anything that you want to. I have got it here in this record.

Mr. Oliver: Are you going to furnish copies of that?

The Witness: I will furnish the Commission with a copy of this.

Examiner Stiles: Just a moment. You are offering that as an exhibit?

The Witness: Yes sir.

Examiner Stiles: Let the reporter mark it as Exhibit No. 50. This will be identified as Exhibit No. 50.

(Exhibit No. 50, Witness Bruce, was marked for identification.)

Examiner Stiles: Now---

The Witness: Just a minute. I wish to offer Statement M 150, which is a statement showing the operating revenues, operating expenses, selected items, for large steam railroads in the United States for four months ending April 1943 and 1942, and the attached sheets,—which are one sheet printed on both sides.

[fol. 1830] Examiner Stiles: Let that be identified as Ex-

hibit No. 51.

(Exhibit No. 51, Witness Bruce, was marked for identification.)

Mr. Oliver: I understand you refuse to furnish copies of that?

The Witness: No, I will request the Commission to furnish me with copies for you, and I will gladly forward them to you.

Mr. Oliver: In view of that, I waive copies.

The Witness: The same figures are shown in "Railroad Data". If you want to cross examine me, I have got it all marked for you, so you can ask me anything you want to about my Exhibit No. 47.

Mr. Reynolds: What is the status of 47 now, Mr. Ex-

aminer?

Examiner Stiles: That's for you to say.

Mr. Oliver: My suggestion was that—

Examiner Stiles: You have an objection on the ground that the statistical data which largely composed the exhibit had not been properly authenticated.

Mr. Reynolds: That's right.

Examiner Stiles: The witness has now furnished the original publications from which this data was taken, as I understand him, which have been offered as exhibits. Do you withdraw your objection to Exhibit 47?

[fol. 1831] Mr. Reynolds: Not entirely, but I am willing that it be received in evidence, in so far as the facts stated therein can be verified from the basic data that Mr. Bruce has submitted.

The Witness: You can ask me if you want to.

Mr. Reynolds: I mean in so far as it contains any data that can be verified from subsequent exhibits.

Examiner Stiles: If the exhibit is admitted, it will be in evidence.

Mr. Reynolds: I don't mind any factual data being considered, but I do object to the other being considered. Consequently, I do not withdraw the objection.

The Witness: I am going to ask that counsel point out one particular instance in my Exhibit No. 47 that I can't substantiate by proper authority.

The Witness: These are your own figures.

Mr. Reynolds: —the number in service on December 31, [fol. 1832] 1939, and 27,758 being the number in service on January 1, 1942, I don't object to that. But I do object to these statements all through here, in which the witness undertakes to draw conclusions and argue.

The Witness: Do you want to read it yourself? Would you believe it if you read it yourself?

Mr. Reynolds: I don't question your figures if you have taken it from the book.

The Witness: Then what are you questioning about?

Mr. Reynolds: Questioning your statements concerning

it, and arguments about it.

Mr. Oliver: May I make one short statement, and I am through. My suggestion was that I understood that Mr. Bruce relied on the facts contained in the publication to which he made reference, and which was later offered I believe as Exhibit 48. Now since that, my suggestic was that inasmuch as the facts relied on were contained in that publication, that he file the publication, and I assumed with the idea he was going to withdraw 47. Since that he has made the statement that every fact contained in Exhibit 47—

The Witness: No.

Mr. Oliver: --was contained either in the Bureau of Railway Economics publication or the exhibit which was introduced or offered as Exhibit 50. Now, if that is so, I—

Examiner Stiles: And some in his Exhibit 40.

[fol. 1833] Mr. Oliver: I beg your pardon.

Examiner Stiles: And some of the facts were in his exhibit 40.

Mr. Oliver: 40?

The Witness: Yes sir.

Mr. Oliver: Well now, with all of the facts in, why argue about 47? That is the point I don't get. If all of the facts are contained in the other exhibits, why put in or attempt to put in Exhibit 47, which is argumentative certainly in many spots? And if every fact contained in this tendered Exhibit 47—

Examiner Stiles: Then he could copy this in his brief,

instead.

Mr. Oliver: -Mr. Bruce can make reference to them in his brief.

The Witness: I'll tell you, Mr. Examiner, I have been denied the right to explain exhibits here today on several occasions, due to the fact that I willingly went ahead to save time and did not go further with an explanation. If you will remember, throughout this proceeding I permitted these people to put in selected items from exhibits, and what not. I permitted them to put in hearsay evidence, and what not, and I have not objected.

I think on this particular exhibit, which is a resume and review of the traffic operations of 1942, which is gotten up, [fol. 1834] and which I have used the exact figures on,

which are published by the Association of American Railroads, which every one of these respondents are members of, and which are further substantiated by the records of the Commission, and it is put in readable form, I think I should be permitted to have my Exhibit No. 47 in. I amwilling to stand cross-examination on it.

Mr. Oliver: In justice to the Examiner, I feel I should say for the record that counsel has not been denied the right so far as I have observed to explain the exhibits.

The Witness: I am denied the right by objections; and in the interest of cooperation I have surrendered my right to explain exhibits.

Mr. Oliver: If I may finish my statement, the Examiner

hasn't denied counsel the right-

The Witness: I didn't say the Examiner had denied it.

Mr. Oliver: —to explain his exhibits. And the only objection I have ever made to what you call an explanation of the exhibit was to reading from the exhibit, just putting it in the transcript, and putting it in as an exhibit too.

The Witness: You had a witness yesterday that consumed practically two hours of the Commission's time, explaining his exhibit that had eighteen pages or more.

Mr. Oliver: Well, I don't care to argue the question. A Examiner Stiles: What is the attitude of the respondents [fol. 1835] now on this Exhibit 47?

Mr. Reynolds: I think we have said enough on the record to give everybody a clear idea of what it is. I withdraw the objection to it.

Mr. Oliver, I think I have got an objection pending. I withdraw mine.

The Witness: Thank you, gentlemen. We have wasted a lot of time on this.

Mr. Oliver: I don't know that I have.

Examiner Stiles: Is there any further cross-examination of the witness?

Mr. Oliver: I have no questions.

Mr. Reynolds: Nether have I.

Examiner Stiles: Do you tender your exhibits, Mr. Brace?

Mr. Bruce: I tender my exhibits. I have forgotten the numbers.

Examiner Stiles: Exhibits 39 to 51, inclusive, with the exception of Exhibit No. 41 are received in evidence.

(Exhibits 39 to 51, inclusive, with the exception of No. 41, Witness Bruce, were received in evidence.)

Examiner Stiles: That completes your presentation, does it, Mr. Bruce!

Mr. Bruce: It completes my case, Mr. Examiner. I want to thank you for your cooperation. Off the record.

(Discussion was had off the record.)

[fol. 1836] Examiner Stiles: Have the respondents any further evidence in rebuttal?

Mr. Reynolds: Are you going to put in any bing?

Mr. Burkett: Off the record.

Examiner Stiles: Suspend the record.

(Discussion was had off the record.)

Mr. Burkett: Inasmuch as the matters before the Commission in this proceeding have been thoroughly covered by other witnesses, I see no reason for burdening the record with any cumulative evidence or testimony or exhibits.

Mr. Reynolds: May we have say five minutes in which to determine whether or not we will have any rebuttal?

Examiner Stiles: We will have a five minutes recess.

(A short recess was taken.)

Mr. Oliver: Mr. Examiner, we have no rebuttal testimony.

Mr. Bruce: May I make a short statement? In regards to the statement that I made that I hadn't had the opportunity of explaining my exhibits in some instances, I don't want to leave the impression that Mr. Examiner had anything to do whatsoever with keeping me from getting a full explanation of my exhibits in. What I meant was that because of objection of counsel I refrained from making certain explanations that I might have made.

Examiner Stiles: Do the parties wish to file briefs?

Mr. Oliver: Yes, we do, Mr. Examiner.

[fols. 1837-1838] Mr. Bruce: Yes sir.

Examiner Stiles: Off the record.

(Discussion was had off the record.)

Examiner Stiles: Briefs will be due on August 16, 1943. All briefs will be due on the same date. A proposed report will be issued.

The hearing is closed.

(Whereupon at 1:15 o'clock p.m. on Wednesday, June 30th, 1943, the hearing in the above entitled matter was closed.)

[fol. 1839]

Alabama Passenger Fares I.C.C. Docket No. 28963 & Exhibit No. 2—Witness: Aiken

Southern Railway System

Examples of possible reductions of INTERSTATE fares for tickets good for transportation in coaches only by purchasing to the point nearest the State Line at which trains are regularly scheduled to stop and rebuying therefrom to INTERSTATE destinations.

Item .			*
1. Anniston, Ala. to Columbus, Miss	(2.2é)	1	\$ 4.11
Fern Bank, Ala. to Columbus, Miss.	(1.65¢)	\$27,50	3.24
Ferd Bank, Ala. to Columbus, Miss	(2.25)		3.24
Saving			\$ 0.87
2. Anniston, Ala. to Meridian, Miss.	(2.2¢)		\$ 4:84
Anniston, Ala. to York, Ala.	(1.65¢)	33.25	
York, Ala. to Meridian, Miss.	(2.2¢)	62	3.87
Saving			\$ 0.97
3. Anniston, Ala. to New Orleans, La.	(2.24)		
Anhiston, Ala, to York, Ala	1.65¢)	3.25	
York, Ala. to New Orleans, La.	(2.2¢)	5.10	8.35
Saving	1.	. /	\$ 0.96
4. Attalla, Ala. to New Orleans, La.			\$ 9.09
Attalia, Ala. to York, Ala.			9.09
York, Ala. to New Orleans, La.			8.15
			\$ 0.94
5. Birmingham, Ala. to Atlanta, Ga.  Birmingham, Ala. to Heffin, Ala.	(1:654)	R1 40	\$ 3.67
Heffin, Ala. to Atlanta, Ga	(2.24)	1.87	3.27
		-	
Saving			\$ 0.40
6. Birmingham, Ala. to Chattanooga, Tenn.	(2.2¢)		\$ 3.19
Birmingham, Ala. to Valley Head, Ala. Valley Head, Ala. to Chattanooga, Tenn.	(1.65¢)	92	2.62
valley riead, Ala. to Chattanooga, renn	(	. 32	2.02
Saving	· · · · · · · · · · · · · · · · · · ·		\$ 0.57
7. Birmingham, Ala. to Cincinnati, Ohio	(2.24)		\$10.74
Birmingham, Ala. to Valley Head, Ala.	(1.65¢)	\$1.70	10.10
Valley Head, Ala. to Cincinnati, Ohio	(2.20).	8.47	10.17
Saving	1		\$ 0.57
[fol. 1840]			
8. Birmingham, Ala, to Knoxville, Tenn.	(2.24)	1	\$ 5.65
Birmingham, Ala. to Valley Head, Ala			0.00
Valley Head, Ala. to Knoxville, Tenn			5.08
· ·			\$ 0.57
Saving			■ U.37

Item			
9. Birmingham, Ala. to Meridian, Miss	(2.24)	<b>e</b> 9 15	\$ 3.4
York, Ala. to Meridian, Miss	(2.2¢)	62	2.7
Saving		in exercise	\$ 0.6
0. Birmingham, Ala. to New Orleans, La. Birmingham, Ala. to York, Ala.	(1.654)	42 15	\$ 7.8
York, Ala. to New Orleans, La	(2.2¢)	5.10	7.2
Saving	*		\$ 0.6
1. Chattanoogu, Tenn. to New Orleans, La	(2.2e)	40 92	\$11.0
Valley Head, Ala, to York, Ala,	(1.65¢)	. 3.80	-
York, Ala. to New Orleans, La	.: (2.2¢)	5.10	9.8
3 Saving.			\$ 1.2
2. Fayette, Ala. to Atlaffta, Ga.	.: (2.2¢)		\$ 5 4
Fayette, Ala to Heffin, Ala. Heffin, Ala. to Atlanta, Ga.			4.5
Saving:	• • •		\$ 0.8
3. Huntsville; Am. to Memphis, Tenn	(2.2¢)		\$ 4.7
Huntsville, Ala. to Cherokee, Ala.	. (1.65c)	\$1.50	/
Cherokee, Ala. 30 Memphis, Tenn	(2.2¢)	2.80	4.3
Saving.			\$ 0.4
4. Meridian, Miss. to Cincinnati, Ohio	(2.2¢)	\$0.62	\$14.1
York, Ala. to Valley Head, Ala.	. (1.65¢)	3.80	
Valley Head, Ala. to Cincinnati, Ohio	. (2.2¢)	8:47	12.89
- Saving		*	\$ 1.23
[ol. 1841]		1	
5. Mobile, Ala. to Chattanooga, Tenn	(2.2¢)	· · · · · · · · · · · · · · · · · · ·	\$ 9.00
Mobile, Ala. to Valley Head, Ala.	(1.65¢)	\$6.25	7.17
5. Mobile, Ala. to Chattanooga, Tenn. Mobile, Ala. to Valley Head, Ala. Valley Head, Ala. to Chattanooga, Tenn.			
· Saving			\$ 1.8
6. Mobile, Ala. to Cincinnati, Ohio	(1.654)	\$6.25	\$10.0
Valley Head, Ala, to Cincinnati, Ohio	(2.2¢)	8.47	14.7
Saving			\$ 1.89
7. Parrish, Ala. to Chattanooga, Tenn.	(2.24)	•0 ==	\$ 4.1
Parrish, Ala. to Valley Head, Ala. Valley Head, Ala. to Chattanooga, Tenn.	(2.2¢)	.92	3.47
Saving 8. Selma, Ala. to Rome, Ga.	(220)		\$ 4 3
Selma, Ala. to Tecumseh, Ala.	(1.55¢)	. \$2.80	
Tecumseh, Ala. to Rome, Ga	(2.2¢)	55	3.40
Saving			\$ 0.9
9. Selma, Ala. to Chattanooga, Tenn. Selma, Ala. to Valley Head, Ala.	(2.2e)	00 00	\$ 5.50
Selma, Ala. to Valley Head, Ala. Valley Head, Ala. to Chattagoga, Tenn.	(2.2e)	\$3.60 92	4.5
	1		-
Saving O. Selma, Ala. to Cincinnati, Ohio			\$ 0.98 \$13.0
Selma, Ala. to Valley Head, Ala.	(1.65¢)	\$3.60	10.00
Valley Head, Ala. to Cincinnati, Ohio	(2.27)	8.47	12.0
Saving			\$ 0.96

Item	9	
21. Sheffield, Ala, to Chattanooga, Tenn (2.24)	\$ 3.6	57
Stevenson, Ala. to Chattanooga, Tenn. (2.24)	\$2.15	-
Saving.  22 Sheffield, Ala. to Washington, D. C	\$ 0.6	14
Sheffield, Ala. to Stevenson, Ala. (2.24). Stevenson, Ala. to Washington, D. C. (2.24). Stevenson, Ala. to Washington, D. C. (2.24).		-
		_
[fol. 1842]	\$ 0.6	3
23. Stevenson, Ala. to Memphis, Tenn. (2.24). Stevenson, Ala. to Cherokee, Ala. (1.654). Cherokee, Ala. to Memphis, Tenn. (2.24).	AD 10	•
	2.86 5.3	6
Saving	\$ 0.6	-
Tuscaloosa, Ala, to Valley Head. Ala (1654)	40 AE	4
Valley Head, Ala. to Chattanooga, Tenn (2.24)	. 92 3.5	7
Saving  25. Tuscaloosa, Ala. to Cincinnati, Ohio	\$ 0.8	7
		9
Valley Head, Ala. to Cincinnati, Ohio(2.24)	. 8.47: 11.13	2
Saving.	\$ 0.8	7
26. Tuscaloosa, Ala. to Atlanta, Ga. (2.24). Tuscaloosa, Ala. to Heflin, Ala. (1.654).	<b>2</b> 2 40	5
Heflin, Ala. to Atlanta, Ga(2.2t)	1.87. 4.27	7
Saving.	\$ 0.68	
27. Valley Head, Ala. to Meridián, Miss. (2.24). Valley Head, Ala. to York Ala. (1.654)		-
Valley Head, Ala. to York, Ala. (2.24) York, Ala. to Meridian, Miss. (2.24)	62 4.42	2
Saving	\$ 1.23	
No. Valley flead. Als. to New Orleans Lo. 1994	1	-
Valley Head, Ala. to York, Ala. (1.65¢). York, Ala. to New Orleans, La. (2.2¢).	5.10 8.90	1
Saving	200	
29. York, Ala. to Atlanta. Ga. (2.24)		
York, Ala. to Heflin, Ala. (1.65¢). Heflin, Ala. to Atlanta, Ga. (2.2¢).	43 EU	
Saving		
ou. Tork, Ala, to Chattanooga, Tenn (2.24)		
York, Ala. to Valley Head, Ala. (1.65¢) Valley Head, Ala. to Chattanooga, Tenn. (2.2¢)	<b>6</b> 2 90	1
		1
Saving	\$.1.26	

Difference

[fol. 1843]

### EXHIBIT No. 3-Witness: Aiken

Alabama Passenger Fares I.C.C. Docket No. 28963 Southern Railway System

Examples showing the fares paid for transportation good in coaches only by INTERSTATE passengers, also paid by INTRASTATE passengers traveling equal distance between points in Alabama.

	Item	Dis- tance Miles	One- Way Coach Fare	in Cost in Favor Intrastate Passenger	
	1. Anniston, Ala. to-Columbus, Miss (2.2¢)	186	\$4 11		
	Anniston, Ala. to Sheffield, Ala (1.65¢)-	193	3.30	\$0.81	
	2. Birmingham, Ala. to Cordele, Ga (2.2¢)	268	5.90		
×	Birmingham, Ala, to Mobile, Ala (1.65¢)	266	4.45	1.45	•
	3. Huntsville, Ala. to Knoxville, Tenn (2.2¢)	209	4.62		
	Huntsville, Ala. to Montgomery, Ala (1.65¢)	208	3:45	1:17	. *
	4. Birmingham, Ala. to Meridian, Miss (2.2¢)	154	3.41	1	
	Springville, Ala. to York, Ala(1.65¢)	155	2 60	0.81	
	5. Tuscaloosa, Ala. to Laurel, Miss (2.2¢)	154	3.44		
	Tuscaloosa, Ala. to Valley Head, Ala (1.65¢)	159	2 65	0.79	1
	6. Selma, Ala. to Rome, Ga (2.2¢)	196	4 33		1
	Selma, Ala. to Decatur, Ala(1.65¢)	188	3.20	1:13	
	7. Birmingham, Ala. to Columbus, Miss (2.2¢)	. 122	2.71		
	Birmingham, Ala. to York, Ala (1.65¢)	127	2.15	0.56	
,	8. Anniston, Ala. to Griffin, Ga (2.2¢)	. 146	3.23		
1	Anniston, Ala. to Akron, Ala	147	2.50	0.73	
1.	9: Decatur, Ala: to Chattanooga, Tenn: . (2.2¢)	122	2.71	. /	
	Sheffield, Ala. to Stevenson, Ala (1.65¢)	127	2.15	0.56	
			i .	"	ı

### .[fol. 1844]. EXHIBIT 4—STEWART

Hugh White, President; H. F. Lee, Associate Commissioner; W. C. Harrison, Associate Commissioner: Lamar Wiley, Secretary; I. F. McDonnell Chief, Bureau of Utilities; J. G. Bruce, Chief, Bureau of Transportation

: Alabama Public Service Commission, Montgomery

### Docket 8618

### Investigation & Suspension Proceeding:

In Re: Increased Intrastate Railway Passenger Fares and Charges from, to and Between Points in Alabama

THE ALABAMA GREAT SOUTHERN RAILROAD, et al., Respondents

### Appearances:

L. L. Oliver, % Southern Railway Company, Washington, D. C., appearing for Alabama Lines whose tariffs are under suspension.

T. J. Stewart, General Passenger Agent, Savannah, Georgia, appearing for Central of Georgia Railway.

W. W. Wharton, Assistant General Passenger Agent, Jacksonville, Florida, appearing for Atlantic Coast Line.

John B. Patterson, Traveling Passenger Agent, P. O. Box 788, Montgomery, Alabama, appearing for Western Railway of Alabama.

W. H. Amerine, Commercial Agent, P. O. Box 1121, Montgomery, Alabama, appearing for Seaboard Air Line.

Railway Passenger Traffic Manager,

J. Ar Bliss, Office of Price Administration, Washington, D. C. appearing for Leon Henderson, Price Administrator, and James F. Byrnes, Director of Economic Stabilization.

J. Mac Jones, Bell Building, Montgomery, Alabama, appearing for Leon Henderson, Price Administrator, Office of Price Administration.

### [fol. 1845] Report and Order of the Commission

On or prior to November 5, 1942, the respondents filed tariffs with the Commission to make effective an increased coach fare of 2.2¢ per mile in Alabama upon all steam railroads.

Upon its own motion the Commission suspended the operation of the proposed increased fares until January 30, 1943, and at the same time entered an order of investigation of the lawfulness and reasonableness of the proposed increased fares.

After due notice to the respondents and to the public, the case was heard by the Commission at its office in Mont-

gomery, Ala. on November 24, 1942.

Appearances were entered at the hearing as shown in the heading hereof.

Prior to 1941, the respondents had maintained a coach fare of 1.5¢ per mile on intrastate transportation for several years by voluntary act of the respondents.

In the latter part of 1941, the railroads had very substantially increased operating expense on account of wage increases to a large number of their employees which became effective during that year.

Following this increase of operating expense, respondents and other railroads of the United States filed a general petition with the Interstate Commerce Commission in the proceeding known as Ex Parte 148 asking for a

substantial increase generally on freight and a 10% increase in fares for passenger transportation. The Interstate Commission granted such petition in so far as the increase of fares for passenger transportation was concerned. In the early part of 1942, respondents filed petition with the Alabama Commission and with other State Commissions in Southern Territory for authority to make such 10% increase effective intrastate in Alabama and in other Southern states. This Commission granted that petition, thereby raising the coach fare to 1.65¢ per mile. Subsequently the Federal Government has imposed a tax upon such transportation fares which increased the amount the passenger had to pay for such transportation.

On August 1, 1942, the Interstate Commerce Commission granted a petition filed by respondents and other steam railroads operating in Southern Territory to increase the coach fare of 1.65¢ per mile to a fare of 2.2¢ [fol. 1846] per mile on interstate transportation in Southern Territory. Following such increase of such fares of respondents interstate to the charge of 2.2¢ per mile, respondents filed with this Commission tariffs to make such rate effective on intrastate transportation of passengers between points in Alabama. As above stated these tariffs were suspended by the Commission upon its own motion and this investigation was ordered.

The first increase above referred to of such fares from 1.5¢ to 1.65¢ per mile was predicated chiefly both before the Interstate Commission and the Alabama Commission upon the substantial increased operating expenses due to the increase of wages of respondents employees as above stated. Meantime the revenues of respondents as shown by the record, both from freight traffic and passenger traffic have increased to an extent which is without precedent in the history of railroad transportation in the United States.

The fact that the railroads have received such large increase of revenue is a matter of common knowledge and for the purposes of this report and order we do not deem it necessary to set up the figures here.

When the Commission inquired of counsel for respondents for the basis on which they asked for the approval of such increased fares, the answer given was that to an extent it was for revenue but that respondents were attempt-

ing to put the intrastate fares on the interstate basis and eliminate any possibility of discrimination.

In so far as the revenue feature of the present case is concerned, the respondents failed to show that they needed the additional revenue for the purpose of obtaining enough revenue to continue essential services. In fact, the record shows abundantly that the total revenue now received by respondents is ample to take care of their operating expenses and in addition furnish reasonable net revenue to respondents.

At the time of the hearing and even more now, since rationing of gasoline has been made effective throughout Alabama and Southern Territory, it is a matter of common knowledge that the passenger traffic of the railroads in Alabama has grown to such an extent that it is very seldom when any railroad can furnish seating capacity for [fol. 1847] the transportation of passengers who travel in coaches between points in Alabama: Almost without exception respondents' passenger coaches between points in Alabama are filled not only to the extent of the seating capacity but to the extent of standing room in the aisles and in the vestibules of the cars between cars.

It is a reasonable inference that interstate passengers on these trains which come into Alabama from other states would have a better chance of getting a seat in the coach. Under the passenger traffic load now these interstate trains which carry most of our intrastate passengers will come into Alabama with all or practically all of the coach seats taken up when they come into this state. Therefore, when intrastate passengers in Alabama get on the train to ride between points in Alabama, the chances are that they will occupy standing places in the aisles and in the vestibules of such cars in making a trip from one point in Alabama to another in Alabama. Under such conditions the plea of discrimination against interstate commerce, and against persons riding such trains in interstate commerce could not be justified.

. In connection with this plea of discrimination and undue prejudice against the interstate coach passengers, it is proper to call to the attention of respondents that when the Interstate Commerce Commission on October 1, 1942, refused to suspend respondents' tariffs to make such coach fare of 2.2¢ per mile effective on interstate coach traffic, the Commission said that in permitting such fares to become

effective without prior investigation did not constitute approval thereof.

Before respondents can successfully show that denial of such increased fares would constitute unreasonable discrimination or undue prejudice to interstate commerce, the respondents have the burden of showing that such increased fare of 2.2¢ per mile is just and reasonable.

The respondents in this case have not even undertaken to discharge the legal requirements of sustaining such burden.

Upon consideration of the evidence, the Commission finds respondents have not justified the proposed increased coach fares.

[fol. 1848] It is, therefore, ordered by the commission, that respondents' said tariffs filed with the Commission to make the proposed increased fares and charges effective intrastate in Alabama be and they are hereby cancelled and that respondents' said proposal to make such increased fares and charges effective on intrastate passenger traffic in Alabama, be and it is hereby denied.

Done at office in Montgomery, Alabama, on this 15th day of January, 1943.

Alabama Public Service Commission, Hugh White, President; H. F. Lee, Associate Commissioner; W. C. Harrison, Associate Commissioner.

Attest: A True Copy. Lamar Wiley, Secretary. [fol. 1849]

### EXHIBIT 5-Stewart

### Central of Georgia Railway Company M. P. Callaway, Trustee Passenger Traffic Department

### Examples of Present Interstate and Intrastate Fares

100					
	Exhibit No	0. 1			
		Miles	Diff. Miles	Coach Fare	Diff.
	Birmingham-Opelika	122.7°		\$2.05	
	Columbus-Sterrett	199 0	1.2	2.75	\$.70
	Birmingham-Sylacauga	51.5		.88	
	Columbus-Camp Hill	49.5	2.0	1.10	. 22
	Birmingham-Goodwater			1.15	
	Columbus-Alexander City	71.5	3.7	1.58	. 43
	Birmingham-Phenix City	149.3		2.50	
	Birmingham-Columbus	151.4	2.1	3.34	. 84
	Birmingham-Phenix City Phenix City-Columbus		•	2.50	
	Therita City-Columbus			.11	
	Montgomery-Eufaula	00.0	/ •	2.61	73
	Cuthbert-Mitchell	80.3		1 40	
	Columbus-Union Springs	80.4	0.1	1.80	40
	Union Springs-Brantley	54.7 <sup>*</sup> 55.7	1.0	1.21	
	Columbus-Montgomery	95.3	1.0	. 94	.27
	Girard-Montgomery	93.8	1.5	2:13	
	Conditious-Girard	30.0	1.0	1.60	53
•	Girard-Montgomery			1.60	
				1.00	
				1 71	. 40
				. 4.41	.42

[fol. 1850]

### EXHIBIT 6-Stewart

# Central of Georgia Railway Company M. P. Callaway, Trustee Passenger Traffic Department

### Examples of Present Interstate and Intrastate Fares

Exhibit No	. 2			
Opelika, Ala. to Troy, Ala.	Miles	Diff. Miles	Coach Fare	Diff. Fare
Via CofGa Ry. (interstate) Via WofA Montgomery, ACL Birmingham to Hurtsboro	117.4	4.2	\$2.53 1.95	\$.58
Via CofGa Ry. (interstate) Via L&N Montgomery, SAL Birmingham to Seale, Ala.	154.2	.32.1	4.11 2.65	1.46.
Via CofGa Ry. (interstate) Via L&N Montgomery, CofGa	171.2 173.2	2.0	3.78 2.90	.88

### EXHIBIT 7-Stewart

# Central of Georgia Railway Company M. P. Callaway, Trustee Passenger Traffic Department

s of Present Interstate and Intrastate Fares

	Examples of Present Interstate	e and m	trastate:	raics	
	Exhibit No	. 3			
			Diff.	Coach	Diff.
		Miles	Miles	Fare	Fare
Birmir	ngham to Inverness		16		
Via	CofGa (interstate)	215.1		\$477	01.09
Via	L&N Montgomery, ACL Troy, Colus	170.2	44.9	2.94	\$1:83
Birmi	ngham to Fort Mitchell	101 2		3.60	
Via	CofGa (interstate)	101.0	21.7	3.14	.46
Via	Lan Montgomery, CofGa	180.2	21.1	3.14	. 40
Sched	ules as follows:				
· · · · · · · · · · · · · · · · · · ·	Ly Birmingham		4:50 PM	CT CofG	8
	Ar Columbus		U:25 PM	EI -	
	Lie Columbus		1:45 AM	EI	
	Ar. Inverness		8:50 AM	CT "	
		-			
	Lv. Birmingham		8:35 PM	CT L&N	1
	Ar Montgompry		0:33 PM	CI	
	Ly Montgomery		7:20 AM	CI ACL	
42.4	Ar Trov		8:59 AM	CI -	
	Ly Troy		4:33 PM	CI COIG	a
	Ar. Inverness.		5:40 PM	CT "	
	•				
		3		6	
	Lv. Birmingham		4:50 PM	CT CofC	ia
*	Ar. Columbus	1	0:25 PM	ET "	1
	Ly Columbus		1:40.AM	E.I.	
	Ar. Ft. Mitchell		7:07 AM	CT "	
	Mi. Lo. Batterion		4 4 4		
		-			
	T The task of the second		7:55 AM	CTLAN	1 1 12
5 .	Lv. BirminghamAr. Montgomery		0.20 AM	CT . "	
	Ar. Montgomery	7 1	5.05 PM	CT CofC	ia.
:	Lv. Montgomery		7:40 PM	CT "	

[fol. 1852]

I.C.C. Docket No. 28963 EXHIBIT No. 8-Witness: Makin

Seaboard Air Line Railway Company L. R. Powell, Jr., and Henry W. Anderson, Receivers

Statement Showing Manner in Which the Lower Basis of Fares (For Travel in Coaches)

Intrastate in Alabama Makes It Possible for Passengers To Defeat the Through Published Interstate Fares

From Borden Springs, Ala.	To Memphis, Tenn.	Through Interstate fare (2.2¢ per mile) Via Seaboard Ry., to Birmingham thence SISF*
Borden Springs,	Birmingham, Ala.	Ry
Birmingham, Ala.	Memphis, Tenn.	Via SLSF Ry
		Possible saving \$0.47

[fol. 1853]

Seaboard Air Line Railway Company

L. R. Powell, Jr., and Henry W. Anderson, Receivers . Statement Showing Manner in Which the Lower Basis of Passenger Fares (For Travel in Coaches)

> Intrastate in Alabama Results in Direct Discrimination Against Interstate Passengers (Traveling via Different Routes between Same Cities or Towns)

The Seaboard Railway, in connection with the Louisville & Nashville Railroad, publishes fares from Piedmont Ala., to Hurtsboro, Alap over an intrastate route wholly within the State of Alabama, viz: Seaboard Railway from Piedmont to Birmingham, Ala., L&N to Montgomery thence Seaboard Railway to Hurtsboro. The Seaboard Railway has in the past published approximately the same fares from Piedmont to Hurtsboro over the interstate route via Seaboard Railway to Atlanta, Ga., thence Central of Georgia Railway, which route is one mile less than the intrastate route through Birmingham, Ala.

Interstate Fare Intrastate Fare From (2.2¢ Per Mile) (1.65¢ per Mile) Piedmont, Ala. Hurtsboro, Ala. (235.9 miles) Piedmont, Ala. Hurtsboro, Ala. \$4.05. (236.9 miles)

Difference in favor of the intrastate route-\$1.16

Seaboard Air Line Railway Company
L. R. Powell, Jr., and Henry W. Anderson, Receivers

Statement Showing Manner in Which the Lower Basis of Fares (For Travel in Coaches)

Intrastate in Alabama Results in Direct Discrimination
Against Interstate Passengers
(Traveling on the same train)

Seaboard Railway Train No. 10, operated from Birmingham, Ala., to Richmond Va., carries interstate passengers from Birmingham, Ala., to Greenwood, S.-C. The same train carries intrastate passengers from Birmingham, Ala., to Piedmont, Ala.

From To Distance Per Mile Per Mile Distance Birmingham, Ala. Cedartown, Ga. Borden Springs, Ala. 91, 6 \$1.55

The intrastate passenger travel on the same train as the interstate passenger, is furnished with the same accommodations; the intrastate passenger travels 14.7 miles less than the interstate passenger, but his fare is 80¢ lower. The interstate passenger pays \$2.02 for that portion of his journey between Birmingham and Borden Springs, while the intrastate passenger pays \$1.55—a difference of 47¢ in favor of the intrastate passenger.

[fol. 1855]

CL-Montgomery &

LAN

### Ехнівіт №2. 9

I. C. C. Docket No. 28963-Witness-Lyhch

Atlantic Coast Line Rail oad Company

Passenger Traffic Department

Statement Showing Manner in Which the Lower Basis of Fares (For travel in Coaches).

Intrastate in Alabama Makes It Possible for Passengers

to Def	eat the Th	rough Published Inters	tate Fa	res	
	One-way Interstate Coach Fare		One- way Coach Fares		Differ- ence in. Fares
Thomasville, Ga. to Montgomery, Ala.	<b>\$</b> 4.60 <sup>©</sup>	Thomasville-Dothan Dothan-Montgomery		Interstate Intrastate	
Bainbridge, Ga. to Birmingham, Ala. via ACL Montg. & L&N	\$6.02	Bainbridge-Dothan Dothan-Birmingham		Interstate Intrastate	
Thomasville, Ga. to Memphis, Tenn. ACL Montg. L&N Bham		Thomasville-Montg. MontgBirmingham Birmingham-Memphis	1.65 5.61	Interstate Intrastate Interstate	
Thomasville, Ga. to	\$12.39	Thomasville-Montg. Montgomery-Mobile Mobile-New Orleans	2.95	Interstate Intrastate Interstate	

\$10.69

[fol. 1856]

### Ехнівіт No. 10

### I. C. C. Docket No. 28963 Witness Lynch

### Atlantic Coast Line Railroad Company

Passenger Traffic Department

Statement Showing Manner in Which the Lower Basis of Fares
(For Travel in Coaches)

Intrastate in Alabama Results in Direct Discrimination
Against Interstate Passengers
(Traveling on the same train)

Atlantic Coast Line Railroad Company Trains Nos. 57-58 and Nos. 180-189 operate between Savannah, Ga. and Montgomery, Ala. and carry interstate passengers between points in Georgia, to destinations in Alabama, and viceversa. The same trains carry intrastate passengers between points in Alabama.

			Fare (2.2¢	Fare (1.65¢
From	To	Distance	Per mile)	per mile)
Thomasville, Ga.	Ozark, Ala.	118.8	\$2.64	
Dothan, Ala.	Montgomery, Ala.	119.0		\$2.00

The intrastate passenger travels on the same train as the interstate passenger, is furnished the same accommodations, both travel approximately the same distance, but the intrastate passenger pays 64¢ less than the interstate passenger.

[fol. 1857]

### EXHIBIT No. 11

### I. C. C. Docket 28963-Witness: J. A. Higgins

### The Western Railway of Alabama

Statement Showing Instances Where Intrastate Coach Fares for the Same or Shorter Distances are Less than Interstate Coach Fares

From	То		Miles	One-way coach fares	Differ-
Montgomery, Ala. Montgomery, Ala.	Atlanta, Ga. Mobile, Ala.	Inter Intra	175 178	\$3.85 2.95	\$0.90
Birmingham, Ala. Birmingham, Ala.	Nashville, Tenn. Mobile, Ala.	Inter Intra	205 222	4.55 /	0.10
Opelika, Ala. Opelika, Ala.	Atlanta, Ga. Birmingham, Ala.	Inter Intra	109 123	2.42 2.05	0.37
Montgomery, Ala. Montgomery, Ala.	Atlanta, Ga. Decatur, Ala.	Inter Intra	175 183	3.85 3.05	0.80
Opelika, Ala. Montgomery, Ala.	Atlanta, Ga. Dothan, Ala.	Inter Intra	109	2.42	0.42
Atlanta Ca Tuna	09 1049		. II.	V	1

Atlanta, Ga., June 23, 1943. Files; 5882-A

18045-A

[fol. 1858]

### EXHIBIT No. 12 I. C. C. Docket 28963—Witness: J. A. Higgins

### The Western Railway of Alabama

Following Figures Illustrate How Passengers Can Buy Intrastate Coach Tickets Between Points in Alabama and Rebuy, Thus Defeating the Through Interstate Fares:

	One-way Interstate coach far	0	One-way		Differ- ence in fare	
Atlanta, Ga.		Atlanta to Lanett	\$1.94	Inter		
to Montg., Ala.	\$3.85	Lanett to Montg.	1.50	Intra	\$0.41	
			\$3.44			
Atlanta, Ga.		Atlanta to Lanett	1.94	Inter	1	
to Dothan, Ala.	6.12	Lanett to Dothan	3.45			
***			\$5.39	14	. 0.73	listica
Atlanta, Ga.		Atlanta to Lanett	1.94	Inter	. 0.13	
to Mobile, Ala.	7.81		4.45	Intra	16	
4	4		\$6.39		1.42	
Atlanta, Ga		Atlanta to Lanett	1.94	Inter	1.72	
to N. O., La.	10 80	Lanett to Grand Bay	4.90	Intra		
10 N. O., La.	10.00	Grand Bay to N. O.	2.53	Inter		
T		1	\$9.37		1.52	
LaGrange, Ga.		LaGrange to Lanett	0.40	Inter	. 1.02	
to Birmg., Ala.	3.56	Lanett to Birmg.	2.45	Intra		
		. /	\$2.85		0.71	
Opelika, Ala.		Opelika to Grand Bay	4.50	Intra	0	*
to N. O., La.	8.51		2.53	Inter		
			\$7.03		1.48	×
Opelika, Ala.		Opelika to Veto	3.90	Intra		
to Nash., Tenn.	7.26	Veto to Nash.	2.09	Inter		
· Your is	- 1		\$5.99		1.27	
Montg., Alà.		Montg. to Lanett	\$1.50	Intra		
to LaGrange, Ga.	2.31	Lanett to LaGrange	0.40	Inter	, -	
	1		► \$1:90		0.41	
Montg., Ala,		Montg, to Phenix City		Intra		
to Cols., Ga.	2.13			Inter		
1 .			\$1.66		0.47	
Cols., Ga.		Cols. to Phenix City	\$ .11	Inter	0, 10	
to Mobile, Ala.	6.09	Phenix C. to Mobile	4.50	Intra		
***	00 10:5		\$4.61		1.48	
Atlanta, Ga., June Files: 5882-A, 1					12	

[fol. 1859]

## EXHIBIT No. 13 I. C. C. Docket 28963—Witness: J. A. Higgins

### The Western Railway of Alabama

Following Figures Illustrate How Passengers Can Buy Intrastate Coach Tickets Between Points in Alabama and Rebuy, Thus Defeating the Through Interstate Coach Fares:

~	One-way Interstat coach far	e	One-way	7 "	Differ- ence in fare
Atlanta, Ga. to Montg., Ala.	\$3.85	Atlanta to Opelika Opelika to Montgomery	\$2.42 1.10	Inter Intra	* 1 70.
			\$3.52		\$0.33
Atlanta, Ga		Atlanta to Opelika	\$2.42	Inter	•0.00
to Dothan, Ala.	6.12	Opelika to Dothan	3.10	Intra	
		8	\$5.52		0.60
Atlanta, Ga.		Atlanta to Opelika	\$2.42	Inter	0.00
to Mobile, Ala.	7.81	Opelika to Mobile	4.05		
			\$6.47		1.34
Atlanta, Ga.		Atlanta to Opelika	\$2.42	Inter	
to N. O., La.	10.89	Opelika to Mobile	4.05	Intra	L
		Mobile to N. O.	3.08	Inter	
			\$9.55		1.34
LaGrange, Ga.	4	LaGrange to Opelika	\$ .84	Inter '	
to Birmg., Ala.	3.56	Opelika to Birmg.	2.05	Intra	
4			\$2.89	4.	0.67
Opelika, Ale		Opelika to Mobile	\$4.05	Intra	
to N. O. La.	8.51	Mobile to N. Orleans	3.08	Inter	
	4 **	/	\$7.13		1.38
Opelika, Ala.		Opelika to Decatur	\$3.45	Intra	
to Nash., Tenn.	7.26	Decatur to Nashville	2.68	Inter	
			\$6.13		1.13
Montg., Ala.		Montg. to Opelika	\$1.10	Intra	-
to LaGrange, Ga.	2.31	Opelika to LaGrange	0.84	Inter	/
\			\$1.94	-	0.37
Montg., Ala.	**	Montg. to Opelika	\$1.10	Intra	0.0.
to Col., Ga.	2.13	Opelika to Columbus	. 66	Inter	1
A. S.	. :		\$1.76		0.37
Col., Ga.		Columbus to Opelika	\$ .66	Inter	0.01
to Mobile, Ala.	6.09	Opelika to Mobile	. 4.05	Intra	1
			\$4.71	,	1.38
Atlanta, Ga., June	02 1042		-40.11		1.00

[fol. 1860]

## EXHIBIT No. 14 I. C. C. Docket 28963—Witness: J. A. Higgins

### The Western Railway of Alabama

Following Figures Illustrate How Passengers Can Buy Intrastate Coach Tickets Between Points in Alabama and Georgia, and Between West Point, Ga. and Lanett, Ala., Thus Defeating the Through Interstate Fares:

	One-way Interstate		One-way coach fares	Differ- ence in fare
Atlanta, Ga.	1	Atlanta to West Point	1.50 Intra	
to Montgomery,	13:1	West Point to Lanett	11 Inter	
Alabama	\$3.85	Lanett to Montgomery	1.50 Intra	
	1.00	15		
			\$3.11 - 3	\$0.74
Atlanta, Ga.		Atlanta to West Point	1.50 Intra	
to Dothan, Ala.	6.12	West Point to Lanett	.11 Inter	40 60 30 30
		Lanett to Dothan	3.45 Intra	
. 1			man and the same	•
			\$5.06	1.06
Atlanta, Ga.		Atlanta to West Point	1.50 Intra	
to Mobile, Ala.	7.81	West Point to Lanett	11 Inter	
		Lanett to Mobile	4.45 Intra	
1			\$6.06	1.75
Atlanta, Ga.		Atlanta to West Point	1.50 Intra	
to New Orleans,	10.00	West Point to Lanett	11 Inter	
Louisiana	10.89	Lanett to Grand Bay	4.90 Intra	* *-
	* .	Grand Bay to N. O.	2.53 Inter	
			\$9.04	1.85
LaGrange, Ga.		LaGrange to West Pt.	. 28 Intra	1.00
to Birmingham,		West Point to Lanett	11 Inter	
Alabama	3.56	Lanett to Birmingham	2 45 Intra	
Alabama	. 0.00	Lanett to Dirimignam	2.40 1110	
	2		\$2.84	0.72
Opelika, Ala.		Opelika to Grand Bay	4.50 Intra	
to New Orleans,	. +	Grand Bay to N. O.	2.53. Inter	
Louisiana.	8.51			/
			\$7.03	1.48
Opelika, Ala.		Opelika to Veto	3.90 Intra	
to Nashville,		Veto to Nash.	2:09 Inter	1
Tennessee	7.26			1
	*		\$5.99	1.27
Montgomery, Ala.	1	Montgomery to Lanett		1
to LaGrange, Ga.	2.31	Lanett to West Point	11 Inter	
		West Point to LaGrange	Intra	
		•		a sal.
		Maria Di Di	\$1.89	0.42
Montgomery, Ala.	0 10	Montgomery to Phenix (	. 1.55 Intra	
to Columbus, Ga.	2.13	Phenix City to Cols.	11 Inter	
			e1 66	0.47
Columbus Ca La		Cols: to Phenix City	\$1.66 .11 Inter	
Columbus, Ga. to Mobile, Ala.	6.09	Phenix City to Mobile	4.50 Intra	
Mobile, Ala.	0.09	I helia City to Mobile	1.00 Intra	
			\$4.61	1.48
Atlanta Ga June	23. 1943 (	Files: 5882-A, 18045-A).	41.01	
remained, Ga., office	20, 1010 (	11, 10010 11,		

### EXHIBIT No. 15 Alabama Passenger Fares I.C.C. Docket No. 28963—Witness: P. E. Geil

### Gulf, Mobile & Ohio Railroad Company

Statement of Present Basic Passenger Fares Between Points on G. M. & O. R. R. (In Cents per Mile)

	Co	ach	First	Class	4
Alabama Intrastate Traffic Interstate Traffic Mississippi Intrastate Traffic O.W.—Que Way R.T.—Round Trip	O.W. 2.2 2.2 2.2	R.T. 1.65 1.98 1.98	 O.W. 3.3 3.3 3.3	R.T. 2.475 2.75. 2.75	

[fol. 1862]

### EXHIBIT No. 16

### Alabama Passenger Fares I.C.C. Docket No. 28963-Witness: R. E. Geil

### Gulf, Mobile & Ohio Railroad Company

Examples of Advantage, Preference and Prejudice as Between Persons In Intrastate and Interstate Commerce in Alabama

		R.T.	
Example 1:	Miles	Coach- Fare	Difference
Columbus, Miss. to Montgomery, Ala Ethelville, Ala. to Montgomery, Ala	167	\$6.65	Dinesence
Example 2:	153	5.06	\$1.59
Columbus, Miss. to Tuscaloosa, Ala	60 57	\$2.50	
Example 3:	01	1.87	\$0.63
State Line, Miss. to Mobile, Ala Fruitdale, Ala. to Mobile, Ala	63 55	\$2,60 1.82	
Example 4:		1.02	\$0.78
Vinegar Bend, Ala. to Shubuta, Miss. Vinegar Bend, Ala. to Mobile, Ala.	49	\$2.00 1.60	\$0.40
			-U. 10

[fol. 1863] [Stamp:] Received Aug. 12, 1943. Railroad Commission of Kentucky

### Ехнивит 17

Southern Railway System, Law Department

Washington, D. C., August 10, 1943.

I. C. C. Docket No. 28963-Alabama Intrastate Fares

Mr. W. P. Bartel, Secretary, Interstate Commerce Commission, Washington, D. C.

DEAR MR. BARTEL:

It has just come to my attention that there are errors in the figures appearing in lines 9 and 18, page 14 of Exhibit 17, introduced by Witness Tasin in the hearing in the above matter at Montgomery, Alabama on June 29, 1943. The indices of hourly compensation appearing on line 9 should be corrected so as to read as follows:

1937—109; 1938—118; 1939—116; 1940—116; 1941—124; 1942—135; average—138.

The effect upon line 18, however, is only of one percentage point, correct figures being:

1937—103; 1938—109; 1939—109; 1940—110; 1941—117; 1942—127; average—111.

I am sending copy of this letter to all parties of record.

Very truly yours, L. L. Oliver, Commerce Counsel.

cc—Examiner C. E. Stiles, Interstate Commerce Commission, Washington, D. C.

Ехнівіт No. 17

# I. C. C. Docket No. 28963-Witness: Tassin

# BEFORE THE

INTERSTATE COMMERCE COMMISSION

FOR INTRASTATE TRAFFIC BETWEEN POINTS IN ALABAMA AN THE MATTER OF PASSENGER FARES AND CHARGES FINDINGS AND DATA IN SUPPORT THEREOF

\$250,166 additional would have been in the coffers of the fourteen railroads involved in this proceeding. Raised to a year's basis, the amount would be \$750,498. For twelve months ended March 31, 1943, the amount would be \$750,498. For twelve months ended Had increase sought in intrastate fares and charges between points in Alabama been in effect between Dec. 1, 1942 and March 31, 1943, February 28, 1943, the amount would be \$654,255.

For many years past passenger operations of these railroads have been in the red.

The average deficit for the seven year period (1936-42) was 20 millions 27 to 33 millions of dollars deficit, the representative average deficit has been 31 millions. In 1941 there was a drop to 19 millions of In 1942 there was an income of 32 millions.

From 1936 to 1940, both inclusive, in a range from

In order to overcome that average deficit of 20 millions of dollars per year by revenue derived from passengers alone (Account 102) the average volume of such revenues would have to be raised by 31%. If other passenger train revenue (Account 108) were included, the he increase sought in Alabama calculated to yield about 750 thousands a year as long as present volume holds, represents 3% perfent of the average annual deficit of 20 millions of dollars—a burden presently being borne by Interstate and Intrastate in such states aghave If total passenger train revenue were included (Accounts 102-109) an increase of 22% would be required. On basis of total passenger revenue, an increase of 21% would be required. required increase would be 30%. allowed the increase.

As apportioned to passenger, the ratios were Passenger carrying cars (1936-40) produced about 15 cents per mile; buggage, express, mail and milk cars 23 cents. 7 years the former had risen to 20 cents and the latter had remained at 23 cents. The tax burden in 1941 was over twice and in 1942 about five times what it was in 1936. .2 and 3.4 respectively.

Rates of employee compensation in 1941 had increased by 18% over 1936 and in 1942 by 28%.

The average price of materials and supplies for the Southern Region in December, 1941 had increased by 24% over October, 1936.

on investment in railway property (including eash and material and supplies) used in transportation service.

For the twelve first class roads here involved, Exhibit A-11 introduced in Ex Parte 148 at the instance of the Commission itself, shows that as of January 1, 1940, an increased capital outlay of 12% would be required to give the country these facilities were they not already with Southern Region as a whole. Weighted in proportion to mileage, both in total and in Alabama, the return is reduced to 3.11%. This means that over that extended period of fat and lean years gross would have had to be increased by 1.3% to realize a net of 5%% Despite the increase in volume of passenger business in 1941 and especially since; that passenger is still in the position of being a burden upon freight is evidenced by the fact the freight operating ratio for these roads (1936-40) is 67%, while for passenger it is 127%. For the average of 7 years (1936-42) it is 64% as compared with 106%. On basis including taxes and rents, freight is 76% as compared The average rate of return earned by these fourteen roads for the average of 22 years (1921-42) was only 3.24%, which about coincides with 142%. For the average of the 7 year period it is 76% as compared with 121%.

Loss in passenger revenue reflected by what would have accrued 'ad increase sought in intrastate fares been in effect in the State of Alabama during the years ended February 28 and March 31, 1943, respectively, and the four months ended March Index of Supporting Statements

Percent by which (102) passenger and (108) other passenger train revenues would have to be raised in order to wipe out net Percent by which total passenger train revenue, excluding switching (Accounts 102-109, inc.) would have to be raised in order passenger revenue would have to be raised in order to wipe out net railway operating deficit from pas-Percent by which (102) passenger revenue would have to be raised in order to wipe out net railway operating deficit from pas-Railway operating ratios (railway operating expenses divided by railway operating revenues) Railway outgo rattos (railway operating expenses, taxes and net rents divided by railway operating revenues) 102) Passenger and (108) other passenger train revenues per passenger carrying car mile (cents) 103) Baggage, (106) Mail, (107) Express and (109) Milk revenue per car mile (Cents) ndex of average unit prices of railway material and supplies, including fuel. to wipe out net railway operating deficit from passenger operations nerease in hourly compensation (cents)-all employees. Net Railway Operating Income or Deficit-Passenger. ailway operating deficit from passenger operations. Fotal railway tax accruals (Accounts 532) lailway Tax Accruals-Passenger... senger operations. senger operations.

Page 18 19 ating in State of 20 road operated at 21 tate of Alabama. 22 Fares Beer in	# Mos. Ended 3731/43 #16,867 2,573 2,600 10,042 16,317 3,159 141,992 78 141,992 2,363 41,662 8,432 8,432 8,432 8,432 8,432 8,432 8,432 8,432 8,432
Confinued hern Region road operated—Railroads operatir ghted in proportion to miles of roa 1940—Railroads operating in State d Increase Sought in Intrastate Far Relow Loss in Intrastate Revenues	28/43 Year Ended 3/31/43  \$45,216 13,960 7,952 25,940 51,838 8,199 522 382,456 244 1,681 7,323 119,413 1,091 23,148
Average annual rate of return 1921-1942, inclusive—Railroads operating in State of Alabama  Average annual rate of return, 1921-1942, inclusive—Railroads operating in State of Alabama  Average rates of return, 1921-42, weighted in proportion to average miles of road operated—Railroads operating in State of Fact and extent of revenue need, average year of 22 (1921-1942, inclusive) weighted in proportion to miles of road operated at Elements of value of property used in common carrier service as of January 1, 1940—Railroads operating in State of Alabama.  Loss in Passenger Revenue Reflected by What Would Have Accrued Had Increase Sought in Intrastate Fares Been in Effect in the State of Alabama During the Periods Shown Relow  Loss in Intrastate Revenues	Year Ended 2/28.43 forthern \$43.418 Coast Coast T 345 T 345 T 345 T 345 T 942 T 943
15. Average annual rate of return 1921-1 16. Average annual rate of return, 1921-1 17. Average rates of return, 1921-42, we 18. Fact and extent of revenue need, averages of year 1942—Railroads operatin 19. Elements of value of property used in [fol. 1868]  I loss in Passenger Revenue Refi	Alabama Great Southern Alabama, Tennessee & Northern Atlanta, Birmingham & Coast. Atlanta, Coast Line. Coast Line. Central of Georgia. Gulf, Mobile & Ohio. Illinois Central Louisville & Nashville Nashville, Chattañooga & St. Louis St. Louis-Sau Francisco Seaboard Air Line Southern Tenressee, Alabama & Georgia Tenressee, Alabama Torial Annual approx.mation. SOURCE: Furnished on request by Accoun

					,				
			2,005,759					29,325 \$20,341,576	
reto)		1942	345,762 I 4,446,553				110,654,634	1 316,319	
reported the		1941 \$32,693					1,033,934	54,597 54,597 119,246,424	
required to be computed by Interstate Commerce Commission and annually reported thereto)	ama	1940 \$585,759 Annual Repo					5,222,582	Annual 103, 532, 933,	
erstate Commerce Commission and ann	State of Alabama	1939 \$568,243	4, 291, 109				2,997,095	ot separated in 100,575 \$31,758,549	
state Commer	Railroads Operating in	1938 \$517,617					4.083,514	77,417 \$32,463,299	
nputed by Inter-	Railroads	1937 \$355,008					3, 207, 798		
d to be comp		1936 \$448,904					3,953,652		
(As require		Road.	Atlanta, Bgham, & Coast.	Central of Georgia	linois Central	Nash., Chatta. & St. L.	St. Louis-San Francisco Seaboard Air Line	TAKG West Ry of Ala. Total	I Desertes Income

SOURCE: Annual Reports to Interstate Commerce Commission.

[fol. 1870]

Percent by Which (102) Passenger Revenue Would Have to be Raised in Order to Wipe Out Net Railway Operating Deficit From

0. 0.0.0.0.0.0.0.0.0.0.0.0.	1936 1937 1938 1937 1938 1938 1938 1938 1938 1938 1938 1938
-----------------------------	---

Percent by Which (102) and (108). Other Passenger Train Revenues Would Have to be Raised in Order to Wipe Out the Net Railway -80.8422228 Be. 24. 1941 Deficit From Passenger Operations—Railroads Operating in State of Alabama 5885555555858 588555555558 SOURCE: Computed from reports of the carriers to the Interstate Commerce Commission. 82222222 Road L&N. NC&St.L. St. L.SF. [fol. 1871] II. Cent. SAL. Southern TA&G.

[fol. 1872]

Percent by Which Total Passenger Train Revenue, Excluding Switching, Would Have to be Rasied in Order to Wipe Out Net Railway Per - Per Operating Deficit From Passenger Operations-Railroads Operating in State of Alabams SOURCE: Computed from reports of the carriers to the Interstate Commerce Commission. 245382288258 Road Southern.

· Accounts: 102-109, inclusive.

•	1.	
rom	A 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	2 "5
t ti	Dec. 1942	
rating D	3 4 6	
ray Ope	¥ 2 4 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	7 0
et Railw na	233233335 233233335 233233335 2332333335 2332333333 23323333333 23323333 2332333 233233	8238
Out N	1940 55 55 70 70 70 70 71 82 83 84 83 84 83 84 84 84 84 84 86 84 86 84 86 86 86 86 86 86 86 86 86 86 86 86 86	Av.
to Wipe Out Net I	88888888888888888888888888888888888888	នន្តន
to be Raised in Order t Railroads Operating in	1988 1988 1988 1988 1988 1988 1988 1988	23 ¥ ≤
aised in	5.2 8.33	
to be R	FE 22.28 E 22.25	3 82
Would Have	22222222 22222222 222222222 2222222222	28.5
Would		
Revenue		
eenger ]		
otal Pas		
1873  Percent by Which Tot	Roa	
t by W		
1873  Percen	S C C C C C C C C C C C C C C C C C C C	athern

SOURCE: Computed from reports of the carriers to the Interstate Commerce Commission.

Road	1936	1937	1938	1939		1961	196
	14.40	16.25	13.96	13 49		27 44	30.86
				Not	vails		
		12.53	9.27	9.78	=	14.98	
	14.87	16.05	15.33	. 13.84	-	20.08	34.7
		12.44	10.83	10.54	-	15.79	
		14.29	12.13	10.90		13.96	
		18.31	17.56	17.55	1	20.79	32.07
		14.49	13.08	12.83	-	17.22	
(		13.87	12.68	12.72	-	17.51	
· · · · · · · · · · · · · · · · · · ·		13.46	12.49	12.23	-	17.54	
		15.89	14.94	16.90	_	23.04	
		16.08	14.98	14.99	-	21.14	
		22.00	18.77	17.25	-	19.39	
		. 18.35	17.12	16.86	-	20.64	
		15.72	14.65	14.56	-	19.95	

pa	1936	1937	1938	1939	1940	1941	1942	Averag
	23.31	23.23	27.02	26.73 Not A	23.66 vailable	25.44	29.66	25.63
				14.35				
	19.41	18.47	17.48	17.39		18.21	19.80	18.24
				18.34				
f				26.09				
)			-	18:21	-			
			-	29.08				
				27.66				
				24 92				
				21.81				
			-	23.54			7.6	
				31.15				
				31.10				
				22.06				

			•		
6					•
		3238		3,368,253 59,569 314,342 2,151,131	
		55.56 56.56 56.56 56.56 57.56	25.28	488 395 106 664 086 511 728 881	495
		3843		15, 552,068 80, 424 301,006 89, 709, 922 \$1	202
in State of Ala	1940 \$1,073,245 43,714 276,312	4,550,000 1,441,266 1,541,369 8,342,027	10,304,935 1,100,371 3,771,505 3,476,947	8,391,483 80,723 193,894 44,587,791	3
s Operating	1939 46,570 273,986			7,814,553 54,477 184,347 10,547,958	911
532) Railroad	1938 \$715,185 41,484 269,434			7,369,019 34,159 173,929 9,040,343 \$	Commission
ds (Account	1937 2673,845 25,783 262,852			23,769 132,666 6,196,647 <b>8</b> 3	te Commerc
y Tax Aceru	1936 \$538,176 38,613 219,890			37,770 128,038 446,376 <b>8</b> 3	o, the Interst
O Total Railwa			63 64 6	<b>.</b>	the carriers to
•	Road			Ala	SOURCE: Reports of the carrier
Ifoi. 187	AAA CB48 CB48	LEGA Rent Rent Nent	NC&St. 1 St. L_SF. S A L. Southern	TA&G W. Ry. o Total Index	SOURCE

Road	1936	1937	11936		1940.	1941	£1. 030.893	\$265,142	
	\$135,290								
			-				-		
		. 10							
	300,554	269,260	354,989		205 190	200.505	193,398	186,127	
	-	-				. 1			0
									•
					1/2				1
<b>B</b>	41,318	42,666	43,210	\$9.516.804	\$10,049,256	\$10,580,468	\$29,285,102	\$12,387,231	•
					118	121	44	24.	

Boads							
Monda	1936	ı	1937	1938	1020		10
	100		150	113	2001		
	100		=	110	911		=
	8		00	100	88		2
	100	4	103	108	35	*	5
	901		102	112	201		
	8		14	. 811	2		
0	8		103	100	108		1
	100		103	116	100		Š
	8		2	112	110		1
	8		103	108	100		3
	38		103	108	100		=
	38		102	. 011	108		2
	38		3	113	121		1
	8		102	801.			
	8		103	109	100	1	
Annual Reports to I. C.							2
							0 0

Average 124 - 125

Index of Average Unit Prices of Railway Material and Supplies, Including Fue October 1936 = 100 Southern Region

131 Dec. 82228 8 280111 Total (excl. fuel Fuel (coal & Oil ron & Misc. 1

222222

Page 9-Ex Parte No. 148 (Reopened). Source: Data underlying Carriers' Exhibit No.

Freight and Passenger Operating Ratios Railroads Operating in State of Alabama 1880 [O]

	937	1938	300		X	2	2	942	Avera
	Pass.		*		Pass.			1.988.	
	131	67 151						3	
	182							1 -	0
	880				*				
	88				-				
15	000								
12.5	· ·	,		•	0		,		
13,	~ +	1		44			1.		
12		86 118	Not Not 123	t Available	. 123		110 84	12	84 105
13	•					έ.			

Average Annual Rate of Return-1921-1942, Inclusive

Railroads Operating in State of Alabama . .

		1					
Rate of Return	4.44	3.20	2.82	999	3.0	35.5	992
Net Railway Operating	\$1,626,028	d 270,503 8,898,620	2,838,469	19,770,778	12,750,084	6,944,690	41,830 296,258 -\$98,874,219
Investment in Railway Property Used in Transportation Service, including Cash Materials and Sumplies	\$36,581,626 8,039,395	22,581,567	027	25	309	8 5	1,373,071 9,743,352 \$3,052,422,489
Roads	Alabama Great Southern Alabama Tennessee & Northern	Atlanta, Birmingham & Coast. Atlantic Coast Line	Central of Georgia Gulf, Mobile & Ohio	Ilinois Central.  Couisville & Nashville	Nashville, Chatta, & St. Louis St. Louis-San Francisco	Seaboard Air Line.	Tennessee, Alabama & Georgia Western Ry. of Alabama Total:

d Denote deficit.

SOURCE: Reports of the carriers to the Bureau of Railway Economics and to the Interstate Commerce Commission (beginning in 1936)

991,	2.48	\$80,190,951	\$52,781,156	\$390,336,964 -\$481,639,038	\$534,754,180. \$642,064,348	\$3,229,010,410	Avg. 1931-42.
	. 2.48	\$80,190,951	\$52,781,156		\$534,754,180	\$3,229,010,410	rg. 1931–42.
3				The second secon	The state of the s		
250	6.41	3	98	3	27		42
845.	4.24	673,	416.	896	77		41
726,	2.57	939	623	200	276		940
667	2.50	502.	853	3	3		900
3	1.90	2	9	900	9		030
601.	2.35	3	189	9	000		620
10,743,969	2.52	80, 146, 408	37,018,915	371,241,330	500,904,542	3, 174, 468, 831	936
1001	8						
94 796	4	301	020	529	651.		35
19 228	1 70	520	034	267	.242.		84
D 16 048 078	1.84	59.677.490	256.	234	,514.		988
48,626	0.78	805	784	379	.781		
562	1.33		36,863,350	424,823,685	.515,584,069	3,321,736,996	931
69,810,548	4.20	126, 128, 361	45,537,572	591,201,527	770,704,548	3,006,173,253	Avg. 1921-30
30,860,679		405	974	80	628		
099	3.99	132,634,559	147,	47	324		62
234		545	940	.088	14		88
275		488	64	642,	. 166		92/
154	5.17	.046	53,857,054	646,031,708	874,464,159	3, 155, 883, 365	926
112,068,	2.60	565,	50,957,	.616,488,300	.081	2, 989, 620, 741	
86,311,	5.00	445	44,982,	594,875,149	.849	2,848,043,577	1924
77, 507.	4.73	64	42,177,	627, 558, 235	3	2,740,319,955	923
55, 791, 992	4.23	109,666,782	37	554, 924, 589	489	2,591,156,704	778
87.841.	2.27	840	\$30,058,	\$589,349,969	\$684,727,318	\$2,544,543,695	1921
1. Income	Return	Amount		Expenses	venue	tation service a	rear
f Net	Rate o			Operating	Operating	used in transpor-	
	Income	Operating Incom		Total	Total	Railway Property	
32	way	Not Railway				Investment in	
			1921-1942	of Class I-Years 1921-1942	Railways of		
			et Income	Revenues, Expenses and Net Income	. Revenue		
				Southern region		, ,	•

D- Denotes Deficit. d'includes allowance for working capital.

SOURCE: Association of American Railroads-Bureau of Railway Economies

Average Rates of Return, 1921-42

Weighted in Proportion to Average Miles of Road Operated Railroads Operating in State of Alabama

		Entire Line			State of Alabam:	bama	
Road	Miles	Return	Weighting	Miles	Return	Weighting	
Alahama Great Southern	315	1	1,399	261	4.44	1,159	
	218	08.0	174	218	08.0	174	
Atlanta, Birmingham & Coast	639	dl. 20	d 767	154	d 1.20	d 185	
	5.074	3.10	15.729	248	3.10	692	
Central of Georgia	1.870	2.70	5,049	261	2.70	1,515	
Gulf. Mobile & Ohio	2.027	2.82	5.716	. 427	2.82	1.204	
Illinois Central	4.937	3.37	16,638	128	3.37	431	
Louisville & Nashville	4.871	. 3.77	18,364	1.171	3.77	4.415	
Nashville, Chatta, & St. L.	1.112	2.47	2.747	111	2.47	274	
St. Louis-San Francisco	4.812	3.00	14,436	341	3.00	1,023	
Seaboard Air Line	4.294	2.42	10.391	208	2.42	503	
Southern	6.622	3.73	24,700	1,029	3.73	. 3,838	
Tenn., Alabama & Georgia	95.	3.05	290	44	3.05	134	
Western Rv. of Alabama	133	3.04	404	133	3.04	404	
Weighted	37,019	3.11	. 115,270	5,034	3.11	15,658	-
d-denotes deficit.						e M	

-SOURCE of Mileage Figures: Reports of the carriers to the Interstate and State Commissions.

Fact and Extent of Revenue Need

Average Year of 22 (1921–12, Inclusive) Weighted in Proportion to Miles of Road Operated at Close of Year 1942

Railroads Operating in State of Alabama

			The real Property lies and the least lies and the lies and the least lies and the least lies and the least lies and the least lies and the lies and the least lies and the least lies and the least lies and the least lies and the lies and the	Appropriate to the same of the		
Road	Miles R	atio	Weighted	Miles	Ratio	Woicht
	. /	105.3	22 075	100		
			00,00	707	. 201	
***************************************		140	30,520	218	140	
		137	87.543	154	127	
			554 001	940	101	
		114	207 004	500		
	-	113	999 467	900	114	
	4.841	111	527 251	1961	. 113	45,652
	7	08	519, 460	971	111	
		116	196 440	9		
	-	16	541 096	150	911	
			000,110	242	911	
			493,712		118	
		0,	716,540	1,065	110	
		01	10,450	44	110	
• • • • • • • • • • • • • • • • • • • •	133	60	14,497	133	109	
		13	.087,946	4.991	113	

[fols. 1886-1887]

		d.					-						
			063	243	109	296	845	282	395	119	463	617	
. 1		8 B	28.	726	228	927,	859,	382,	8	715,	078	300	
	4.9					8							
	Capital Outlay		•••	6.0	_							£3,	
	tal		2:	- 32	61	22	18	250	8	2:33	38	100	
	Capi		-						-	-	-		1
	٠.	RSIS	-			2.804							
		B	8	2000	=	652	53	G	32	3	3	2,97	
3					Attend				-			**	. :
=		¥-	8	38	50	88	8	8	500	.700	36	200	
ıary	Sal	apit	230	338	979	5.8	377	662	132	654	332	588	
Jan.	ppraisa	<b>₹</b> 0	*	0	1	Si is	00	-	4	က်	5	\$36	
s of	Ap			90	20	250		6,	00	23	45	210	100
Service as of January 1 of Alabama	ren	90				3,433							
Als	S	Land	.19	0.0	.12	,573,	8	2	00.	8,3	7	999	
er S		-	. Se	200	=	45	2	=	8	-	4	\$23	.4
ments of Value of Property Used in Common Carrier Railroads Operating in State			0	9-	- 00	90 9	20	9	2	88	200	200	
on C		t ton									-	3,902	
atin	Basis B	eproduction Estimate	.59	-								989	
ပို့ ရှိ	Ba	Est	\$36	200	12.	905	26.6	30	23	25	57	-8	
ed in		=	•									66	
rty.Used Railroads			407	485	026	668	225	274	038	451	141	2869	
Ra	. Y	ction	74	270	525	144	017	150	731,	216	419	16 16	
Prof	Basis A	roduction Cost	35	24	90	98	4.8	30	000	38	93	707	
jo		P.	**		- 12						4	\$2.	0
alue				: :		: :	:		: •			•	2
A jo		٠									1:		9
nts					:.		:		:				
eme			• ;		:			:					
			7	Coas		: :		le.	7.	1860		Dam	
		. 0		*	ine	Ohio		EVE.	9	anc		Alal	
			Alakama Canat Couthorn	Atlanta, Bgham, & Coast.	st L	Gulf, Mobile & Ohio	00	Louisville & Nashville.	Nashv., Chatta. & St. L.	St. Louis-San Francisco		Western Ry. of Alabama Total	
/			-	Be	000	200	ral	6 6	Cha	-Sa	E	E.	nation of the A see
				nta,	otic	ĕ	ent	N	IV.,	mo.	her	d.	: 1
			4011	Vilai	Atla	Sulf	Ill. Central Co.	nor.	Sas	36	Southern Rv.	Wester Total	nat.
									-				

[fol. 1888]

#### EXHIBIT 18

[fol.1889] Before the Alabama Public Service Commission

Investigation & Suspension Proceeding

In Re: Increased Intrastate Fares and Charges from, to and between points in Alabama

### Docket 8618

THE ALABAMA GREAT SOUTHERN RAILROAD, ALABAMA, TENNESSEE & NORTHERN RAILROAD CORPORATION (John T. Cochrane, Jr., Trustee), Atlanta, Birmingham and Coast Railroad, Atlantic Coast Line Railroad, Central of Georgia Railway (M. P. Calloway, Trustee), Gulf, Mobile & Ohio Railroad, Illinois Central Railroad, Louisville & Nashville Railroad, The Nashville, Chattanooga & St. Louis Railway, St. Louis-San Francisco Railway (J. M. Kurn and John G. Lonsdale, Trustees), Seaboard Air Line Railway (L. R. Powell, Jr., and Henry W. Anderson, Receivers), Southern Railway Company, Tennessee, Alabama & Georgia Railway, The Western Railway of Alabama, Respondents

Alabama Public Service Commission,

# Montgomery, Alabama

Tuesday, November 24, 1942, at 11:25 o'clock a. m.

Before Hon. Hugh White, President; Hon. H. F. Lee, Associate Commissioner; Hon. W. C. Harrison, Associate Commissioner; J. G. Bruce, Chief, Transportation Bureau

## APPEARANCES:

L. L. Oliver, c/o Southern Railway Company, Washing [fols. 1890 1891] ton, D. C., appearing for Alabama Lines whose tariffs are under suspension.

T. J. Stewart, General Passenger Agent, Savannah,

Georgia, appearing for Central of Georgia Railway.

W. W. Wharton, Assistant General Passenger Agent, Jacksonville, Florida, appearing for Atlantic Coast Line. John B. Patterson, Traveling Passenger Agent, P. O. Box 788, Montgomery, Alabama, appearing for Western Railway of Alabama.

W. H. Amerine, Commercial Agent, P. O. Box 1121, Montgomery, Alabama, appearing for Seaboard Air Line

Railway Passenger Traffic Manager.

J. A. Bliss, Office of Price Administration, Washington, D. C., appearing for Leon Henderson, Price Administrator, and James F. Byrnes, Director of Economic Stabilization.

J. Mac Jones, Bell Building, Montgomery, Alabama, appearing for Leon Henderson, Price Administrator, Office of Price Administration.

#### [fol. 1892]

### Proceedings

President White: The next case to be heard by the Commission at this time is Commission's Docket No. 8618, which is an investigation and suspension proceeding upon the proposal of the respondents to increase intrastate railway passenger fares and charges from, to and between points in Alabama in coaches, as I recall the application.

The increase is limited to coach fares, isn't it?

Mr. Bliss: That is not my understanding. President White: Maybe I am in error.

Mr. Oliver: It is coach fares and certain round trip Pullman fares with different limits; we will explain that in the proceeding.

President White: Have the respondents entered their

appearances in writing?

Mr. Oliver: Yes sir. President White: The Commission will then take, other

appearances.

Mr. Bliss: J. A. Bliss, of the Office of Price Administration, Washington, D. C., and J. Mac Jones, care of Office of Price Administration, Montgomery, Alabama, appearing for James F. Byrnes, Director of Economic Stabilization and Leon Henderson, Price Administrator. This is an intervention such as is contemplated by the Act of October 2nd.

President White: 1942!

[fol. 1893]. Mr. Bliss: 1942; that is right.

President White: You mean the Act of Congress?

Mr. Bliss: Yes sir, the Act of October 2nd, 1942, is entitled an Act to amend the emergency price control Act of 1942, to aid in preventing inflation, and for other purposes.

This Act provides: "That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase."

President White: As I understand, that notice has been given in this case by the respondents, is that correct?

Mr. Bliss: It has.

President White: Then no question is raised on notice not having been given?

Mr. Bliss: No sir.

President White: Are there any other appearances?

(No response.)

President White: If not, let those who will testify be sworn.

(Witnesses present sworn.)

Mr. Bliss: We will have another vitness that will arrive [fol. 1894] in about an hour on another train.

President White: You don't ask that the proceedings be

delayed on that account?

Mr. Bliss: No, but in swearing them in, I just wanted to call that to your attention.

President White: The first witness for the respondents. Mr. Oliver: I will call Mr. Barry.

E. E. Barry, being first duly sworn, testified as follows:

Direct examination.

By Mr. Oliver:

Q. Mr. Barry, will you give your initials to the Reporter, please, sir?

A. My name is E. E. Barry.

Q. By whom are you employed and what is your official position?

A. I am employed by the Southern Railway, Assistant Passenger Traffic Manager, Washington, D. C. Q. You also act for the Southern Railway System Lines, do you not, in the same capacity?

A. Yes sir.

Q. State very briefly the experience that you have had in the passenger department of the Southern Railway

Company ?

A. I entered the employ of the Southern Railway in January, 1911, and have been with them since, through [fol. 1895] different positions, and entered my present position on November 1, 1937.

Q. On whose behalf are you testifying in this proceeding?

A. Southern Railway Company was designated to act as chairman of the railroad committee in this proceeding, and I am testifying on behalf of all of the railroads whose tariffs are under suspension.

Q. What one-way coach fare is now being maintained generally by the roads operating in Alabama for intrastate

transportation within the state?

- A. The basis generally maintained by the southern roads is 1.65 cents per mile. However, certain of the Alabama railroads, such as the Illinois Central, the St. Louis & San Francisco, and the Gulf, Mobile & Ohio, now have in effect a fare of 2.2 cents per mile, except in instances where they are forced to carry a lower fare to meet the competition of southern lines.
- Q. What one-way coach fare is being charged by all Alabama railroads for interstate transportation to and from points in Alabama?

A. 2.2 cents per mile.

Q. Is this 2.2 cents fare now in effect for interstate transportation generally throughout the south?

A. Yes.

Q. Is the same fare of 2.2 cents per mile applicable at the present time generally throughout the entire United States?

[fol. 1896] A. Yes, including the railroads operating in Official Classification Territory, as well as the railroads (with possibly a few exceptions) operating throughout the entire territory west of the Mississippi River.

Q. Is it the desire and purpose of the southern railroads to make the same fare applicable for intrastate transportation in each of the southern states and have proceedings to that end already been commenced before each southern state commission?

A. Yes. Petitions have been filed in those states the laws of which require that authority of the state commission be first obtained. In other southern states, in which there is no such requirement, tariffs designed to make effective the increases have been duly filed with the state commissions. I might add that hearings have already been had in Virginia, South Carolina, and Florida.

Q. When and under what circumstances was the 2.2 cents fare made applicable for interstate transportation generally throughout the centh.

erally throughout the south?

A. This fare was made applicable on October 1, 1942, pursuant to authority granted by the Interstate Commerce Commission by order dated August 1, 1942, in Ex Parte No. 148, Increased Railway Rates, Fares and Charges, 1942, 248 ICC 545. I have copy of this order which I would like to file as an exhibit.

[fol. 1897] President White: That is the order in Ex

Mr. Oliver: Yes sir, it is Ex Parte 148, but it relates to the passenger fares instead of the general increase in the freight rates.

President White: I think it is already of record in our other proceedings where the carriers submitted for approval of the first increase, that is 10 cent increase, but we have no objection to your putting it in here in order to show the situation.

Mr. Oliver: This is the order of August 1, 1942, authorizing the increase in ceach fares, passenger fares.

President White: Very well.

Q. Proceed, please,

A. This order was entered by the Interstate Commerce Commission in response to a petition filed by substantially all railroads operating in Southern Passenger Association Territory, dated July 14, 1942, wherein permission was sought by the southern roads (except those roads which were maintaining at the time a coach fare of 2.2 cents) to place their one-way coach fares on the same basis which was already applicable generally throughout the rest of the United States.

President White: This order is marked Exhibit No. 1.

(Exhibit No. 1, Witness Barry, marked for identification.)

Q. Will you proceed?

A. When this petition was filed most of the southern [fol. 1898] roads had in effect a coach fare of 1.65 cents per mile. However, certain roads, notably the Illinois Central System, St. Louis-SanFrancisco Railway, Gulf, Mobile & Ohio and several others, were already maintaining a fare of 2.2 cents, which was the basis generally applicable throughout the rest of the country.

Q. When the above-mentioned petition was filed with the Interstate Commerce Commission, was any objection to the proposed increase made by anyone before that Commission?

A. No. However, after the Interstate Commerce Commission had entered its order of August 1, 1942, approving the proposed increase; and after the tariffs had been filed as authorized by the Interstate Commerce Commission, Mr. Leon Henderson, Price Administrator, filed a written protest and request for suspension. The railroads duly filed their answer to this protest. I now wish to file copy of this answer as an exhibit.

President White: This document identified by the witness is marked Exhibit 2.

(Exhibit No. 2, Witness Barry, marked for identification.)

The Witness: The Interstate Commerce Commission refused to suspend the tariffs and they became effective, as stated, on October 1, 1942.

President White: Did the Commission enter an opinion or order other than the final order denying the request to

suspend?

[fol. 1899] Mr. Bruce: The Commission briefly denied the suspension, and it is just on a form that they use, it us just a mimeograph form.

Mr. Bliss: I have the language that they used if you want

to have it read into the record at this point.

President White: May I see it! I think possibly the record is sufficient. That just happens to be quoted in that document.

Mr. Bliss: Yes sir.

President White: It is brought to the attention of the Commission by the Office of Price Administrator, as we will use the term in this case to refer to the Federal intervention—he has called our attention to this language used by the Interstate Commerce Commission in declining to suspend

the interstate tariffs referred to; and the statement is as follows:

"The Commission's action in thus permitting the protested schedules to become effective as published without prior Investigation under the authority conferred upon it by Section 15—(7) of the Interstate Commerce Act does not constitute approval thereof, since any or all of such schedules are subject to investigation for conflict with any provisions of said Act upon formal complaint which may be filed at any time in accordance with the Commission's Rules of Practice."

[fol. 1900] Go'ahead, gentlemen.

Q. How did it happen that prior to October 1, 1942, some, but not all, of the southern railroads had in effect a coach fare of only 1.65 cents per mile, whereas the fare generally applicable in other parts of the country was 2.2 cents per miles?

A. Prior to 1933, the coach fare generally applicable in the southeast, both state and interstate, including Alabama, was 3.6 cents per mile. About that time some of the southern roads decided, as an experimental proposition, to establish a lower fare for travel in coaches, solely for the purpose of attempting in that manner to attract additional coach travel to the railroads in competition with other forms of transportation, particularly buses and private automobiles.

For example: Southern Railway Company adopted a base fare of 1.5 cents per mile on certain portions of its line. Then the Norfolk Southern Railroad on January 15, 1933, adopted a base fare of 1.5 cents per mile on certain portions of its line and on March 1, 1933, extended that basis to cover its entire line.

On April 1, 1933, the Louisville and Nashville Railroad, Nashville, Chattanooga and St. Louis Railway, Atlanta and West Point-Western Railway of Alabama, and Mobile and Ohio Railroad placed in effect experimental one-way fares [fol. 1901] on basis of 3 cents per mile for travel in sleeping or parlor cars, and 2 cents per mile for travel in coaches, which basis remained in effect until December 1, 1933.

On December 1, 1933, the Southern lines generally placed in effect experimental fares on basis of 3.0 cents per mile in sleeping or parlor cars without surcharge, and 1.5 cents per mile in coaches. The Central of Georgia, Gulf, Mobile

& Northern, Illinois Central, Mobile & Ohio, Richmond, Fredericksburg and Potomac, and St. Louis-San Francisco retained the old basis of 2.0 cents per mile, meeting competition where necessary.

On September 1, 1936, the Atlantic Coast Line Railroad increased the fare for transportation in coaches to 2 cents per mile, meeting competition of lines maintaining coach

fare of 1.5 cents per mile where necessary.

In Docket No. 26550, Passenger Fares and Surcharges, decided February 28, 1936, and reported in 214 ICC 174, the Interstate Commerce Commission after conducting a very extensive investigation found that passenger fares of 2 cents per mile in coaches and 3 cents per mile in sleeping or parlor car services throughout the United States would be reasonable.

In the same case the Commission referred to what it described as the "experimental fare" of 1.5 cents which was then being maintained by certain railroads in the south, [fol. 1902] and although approving the reasonableness of a fare of 2 cents per mile, held that this reduced rate of 1.5 cents was not "unlawful". Thereafter, effective November 15, 1937, the southern roads increased their basic coach fare to 2 cents per mile, but subsequently certain of the southern roads, not including, however, the Illinois Central, St. Louis-San Francisco Railway, Gulf, Mobile and Ohio Railroad and possibly some of the smaller roads, concluded that it would be to their best interest to restore the former fare of 1.5 cents, and this was accordingly done effective January 15, 1939.

By its order of January 21, 1942, in Ex Parte No. 148, the Interstate Commerce Commission, upon petition of the railroads operating throughout the United States, approved a uniform increase of 10 per cent in all passenger fares, with certain provisions as to the disposition of fractions. Accordingly, passenger fares throughout the United States were increased 10 per cent effective February 10, 1942.

The general basis of coach fares applicable in the south, with the exception heretofore mentioned, thus became 1.65

cents per mile.

On the other hand, the former fare of 2 cents per mile which was being maintained by the railroads in other parts of the country, including some of the railroads in the south, became 2.2 cents per mile. This increase was also approved

by this Commission for intrastate travel on lines then main-[fol. 1903] taining a 2 cents per mile basis as well as lines

maintaining a basic fare of 1.5 cents per mile.

Q. Do you, as an experienced railroad traffic official, know of any reason which would require or justify the maintenance of a fare of only 1.65 cents for intrastate coach transportation within the State of Alabama while at the same time an interstate passenger traveling to or from the same points in the state would pay 2.2 cents per mile?

A. No.

Q. Do the interstate and intrastate passengers very frequently ride on the same trains and in the same coaches?

A. Yes.

Q. With the present differences between intrastate fares and interstate fares, is it possible for a passenger to defeat the interstate fares by buying an intrastate ticket for a part of an interstate journey?

A. Yes. For instance the published interstate fare from Mobile, Alabama, to Nashville, Tennessee, is \$10.41. On combination of fares, Mobile to Decatur, Alabama, (intrastate) of \$5.90 and Decatur, Alabama, to Nashville, Tennessee, (interstate) of \$2.68 the through fare from Mobile to Nashville would be reduced by \$1.83.

Again, the through interstate fare, Columbus, Georgia, to Birmingham, Alabama, is \$3.34. On combination of fares, Columbus, Georgia, to Phenix City, Alabama, (interfol. 1904) state) of eleven cents and Phenix City, Alabama, to Birmingham, Alabama, (intrastate) of \$2.50 the through fare from Columbus to Birmingham would be reduced by 73 cents.

Through interstate fare, York, Alabama, to Chattanooga, Tennessee, is \$5.98. On combination of fares, York, Alabama, to Valley Head, Alabama, (intrastate) of \$3.85 and Valley Head, Alabama, to Chattanooga, Tennessee, (interstate) of 92 cents, the through fare from York to Chattanooga would be reduced by \$1.21. These illustrations could be multiplied indefinitely.

Q. Do you know of any reason why a passenger traveling in Alabama should pay a lower fare than passengers traveling in the densely populated sections of the north and east, for example, where the volume of travel is far greater than it is in Alabama?

A: No.

Q. Did the Interstate Commerce Commission have before it in Ex Parte No. 148 a full and complete record of the facts concerning revenues, expenses, operating conditions, financial conditions, etc., of the southern railroads, including the Alabama lines, as well as railroads operating in other parts of the country?

A. Yes. Copy of the record is on file with this Commis-

sion.

President White: Do you mean a copy of the financial statements is set out in Ex Parte 148?

[fol. 1905] The Witness: That is right, sir.

Mr. Oliver: I would like to ask-

President White: Of course, that case was decided in the first part of this year, wasn't it?

Mr. Oliver: It was decided in January of this year,

ves sir.

President White: And the financial statistics in that record did not come up even to the first of January, 1942, as I recall.

Mr. Oliver: I think you are correct about that, sir.

President White: I don't recall what time that came,

possibly not later than October, '41.

Mr. Oliver: I might state at this point that we intend to bring down some of these figures for the first eight months of 1942 so you will have before you a rather complete picture.

President White: Will Mr. Barry offer that?

Mr. Oliver: No sir, that will be offered by an accounting or statistical witness.

President White: All right.

Mr. Oliver: I would like to ask that this Commission make available to itself the record in Ex Parte 148, which is on file with you.

President White: Any objection?

Mr. Bliss: No sir, but I would like to ask Mr. Oliver if he would be willing that this Commission take into con-[fol. 1906] sideration such statistical statements that have come from the Interstate Commerce Commission, like Statement M-100 for the various months so far in 1942.

Mr. Oliver: That is not on file with this Commission.

Mr. Bliss: I believe that the Commission has copies of it. .

Mr. Oliver: I think that we should limit it to what the Commission had before it in Ex Parte 148. That is as far as

I am going, and I am undertaking to bring out certain figures since that time. I think you are familiar with that.

President White: After respondents' witnesses testify. you will have the privilege of offering whatever you think is material and relevant, and we will consider it when it is offered.

Mr. Bruce: Is the Commission to understand that you are standing on the same principle in this case that you did in Ex Parte 148, the revenue case?

Mr. Oliver: It is not strictly a revenue case, Mr. Bruce.

President White: What is the basis on which the repondents are asking for the approval of the increased fares in this case! That question is properly addressed to counsel and not to the witness, I think.

Mr. Oliver: It is to an extent a revenue case,—at least, the carriers are interested in the revenue. They have [fol. 1907] filed with the Interstate Commerce Commission an application to increase the fares or to put their fares on the basis that the fares are on in the rest of the country, and the Interstate Commerce Commission has permitted that. Now, we want to bring the state fares to the same level.

President White: As I understand the action of the Interstate Commerce Commission, they made no adjudication that the increased rate was just and reasonable or otherwise lawful. That is my interpretation of the paragraph. that was read into the record, the statement issued by the Commission, and I think it would follow as a matter of law whether they had said anything or not, the mere permission of a tariff to become effective without any notice and hearing and without any quasi adjudication, that the changed rate is just and reasonable and otherwise lawful, would make it what we call a permissive rate.

Mr. Oliver: Well, Mr. Chairman, we go back farther than

that. You are talking now about the suspension-

President White: Yes, I have not forgotten the decision of the Commission in Docket 26550 where they decided that 2 cents in southern territory would not exceed a reasonable rate.

Mr. Oliver: Yes sir.

President White: And, of course, that adjudication still stands.

Mr. Gliver: Yes sir, and in the order of August 1, 1942, they permitted the carriers to file tariffs to bring up their fares to that basis plus the Ex Parte 148 increases.

President White: When they permitted you to increase them to 2.2 they exceeded the rate that they approved as reasonable in Docket 26550. That is just 10 per cent, but it is 10 per cent.

Mr. Oliver: You are correct about that, of course, but, in the meantime, they had authorized a general 10 per cent increase in passenger fares on the northern roads and the western roads and some of the southern roads.

President White: But that 10 per cent granted in the Commission's order on January 21, 1942, in Ex Parte 148, that the 10 per cent increase allowed was referable to that effective date and not what they had found to be reasonable in Docket 26550.

Mr. Oliver: Yes sir, the 2 cent fare or the 1.65 fare, or whatever it happened to be in the order of August 1, 1942, the Interstate Commerce Commission authorized the carriers to file tariffs bringing their fares up to 2.2 cents.

President White: That is true.

Mr. Oliver: In answer further to your question, Mr. Bruce, as I say, it is, to an extent, a revenue case, but we are attempting to put the intrastate fares on the interstate basis and eliminate any possibility of discrimination. [fol. 1909] Mr. Bruce: The reason I asked the question was this—that you are placing yourself in the position today, by making reference to the record made before the Commission in January of this year in the revenue case, and if you do that, then the Commission has to take into consideration what your revenues are.

Mr. Oliver: We are undertaking to show that from a financial standpoint that the carriers have not earned in all of the years, on the passenger business, a fair return on their investment, and that even at the moment, most of the carriers, from a passenger standpoint, are in the red, and that we are stressing it on that basis, and, in addition to that, we are trying to iron out any inconsistency between the interstate and the intrastate fares from a discrimination standpoint.

President White: All right. Proceed.

Q. Are the railroads, including the Alabama lines, encountering any particular difficulties and expense in con-

nection with passenger operations under existing conditions!

A. Yes, in many ways. In the handling of military movements substantial added costs are necessarily incurred. The equipment must be assembled at point of origin and such equipment must be returned from destination point, thus making a two-way movement on which revenue is reteived on a one-way haul only.

Also, in compliance with Government requirements, it is [fol. 1910] necessary to have a train escort ride all troop trains, which places an added burden of expense on the

railroads.

To give the protection required by the Government for military movements, employees in general offices must be on duty, in shifts, 16 hours, and in some cases 24 hours, each day, and necessarily there has been a substantial increase in personnel and expense in general passenger offices.

Due to the tremendous increase in the volume of civilian travel, the railroads have been compelled to practically double the ticketing and accounting forces in nearly all of their ticket offices, and increase the personnel of passenger offices at larger points, such as Birmingham, Mobile, Anniston, etc.

Since 1933, the southern railroads have spent large sums of money in remodeling and air-conditioning their passenger equipment, in their efforts to recapture travel from other modes of transportation, particularly from the highways, thereby providing additional comfort and convenience for their patrons. This has materially increased the cost of passenger service.

For example, during this period on Southern Railway System Lines 189 coaches have been air-conditioned or purchased new with air-conditioning facilities. Many coaches have been remodeled to provide commodious dressing rooms for both ladies and men, with soap, towels and drinking cups furnished free. These improvements resulted [fol. 1911] in reducing the seating capacity per coach from 80 to 88 persons to 70 persons.

Additionally, 14 coaches have been equipped with reclining seats and in these coaches the seating capacity was reduced from 80 persons to 46 persons, which, of course, greatly decreases the carrying capacity and correspond-

ingly lowers revenue per coach.

In addition to the improvements stated, Southern Railway System Lines have purchased new, six streamlined pasenger trains with a total of 21 coaches, six combination baggage coaches, five dining cars and six buffet coaches; six two-car Diesel units and sixteen Diesel powered locomotives for passenger train service.

President White: How much of that deluxe service is available for intrastate transportation of passengers in Alabama?

The Witness: Well, practically across the entire state from the Georgia-Alabama state line to the Alabama-Mississippi state line, through Birmingham, Anniston, Tuscaloosa.

President White: Do you know how many local stations those trains stop at besides Birmingham in Alabama?

The Witness: They stop at Anniston, Birmingham and Tuscaloosa, I believe.

President White: All right.

[fol. 1912] The Witness: That is the Southern Railway trains.

President White: Yes.

Q. Will you please proceed?

A. On streamlined passenger trains, operated on the Atlantic Coast-Line, the Louisville & Nashville, Illinois Central, and the Southern, uniformed passenger representatives accompany each train, whose duty it is to give helpful service and assistance in making the passenger's trip comfortable and pleasant. There is also provided on these trains one attendant to each two coaches and a hostess or maid whose especial duties are to look after the comfort of women and children. All of these refinements add to the expense of operation.

The added facilities and improvements provided are available to Alabama intrastate passengers as well as interstate passengers to or from Alabama, and the interstate passenger is now paying for this service on basis of 2.2 cents per mile, whereas the intrastate passenger is paying

only 1.65 cents per mile.

Q. Please state for the record the number of troop trains operated on Southern Railway System Lines during the months of September and October, 1942, and the number of cars handling troops operated in your regular passenger

trains during those months. Please also give the number of regular trains which were operated in two sections dur-

ing the same two months.

[fol. 1913] A. On Southern Railway System Lines during the month of September there were operated 429 troop trains. 219 regular trains were operated in two sections, and 1776 extra cars handling troops were operated in regular trains. During October there were operated on Southern Railway System Lines 384 troop trains. 132 regular trains were operated in two sections and 1565 extra cars handling troops were operated in regular trains.

Q. Does the Government pay full tariff fares for troop

movements?

A. No. On military movements the Government receives

a deduction of 50 per cent on land grant mileage.

In Alabama, as in my other states, there is considerable land grant mileage. The entire mileage in Alabama of the Alabama Great Southern Railroad, 244.94 miles, is land grant.

The line of Southern Railway Company from Jacksonville, Alabama, to Selma, Alabama, a distance of 145 miles, is land grant. There is substantial land grant mileage on

other Alabama railroads.

The Government will pay for military transportation only on basis of lowest net fare and thus in many instances railroads with no land grant mileage must accept the deduction on movements handled in competition with lines having land grant mileage; for example, the same published fare from Selma, Alabama, to Washington, D. C. applies via Birmingham, AGS to Chattanooga, thence Brisfol: 1914] tel and Lynchburg, or via Western Railway of Alabama to Montgomery and Atlanta, thence Southern Railway or Seaboard Airline Railway.

As previously stated, the AGS Railroad in Alabama is land grant mileage and the net fare which the Government would pay would be constructed by this route which gives land grant deduction. The route by Atlanta has no land grant mileage, but the lines operating over this route would receive only the lowest competitive net fare, being required.

to absorb the applicable land grant deduction.

Additionally, on military travel an allowance is made to the Government of 5 percent from commercial fares of all classes between points between which no land grant deductions are applicable, and 3 per cent of net fares of all classes applying from point of origin to destination via routes over which land grant deductions are applicable on any part of the through route.

O. The suggestion has been advanced that the southern railroads, including the Alabama lines, are seeking to "take advantage of present war conditions," feeling that "due to war conditions which have seriously affected their competition they are able to increase these rates." What have

you to say upon that subject?

A. The Alabama railroads are not "seeking to take advantage of present war conditions." They are merely seeking to place their coach fares in Alabama upon the [fol. 1915] same basis that is applicable generally on railroads in other parts of the country, and that has been specifically approved by the Interstate Commerce Commission and made applicable for interstate travel to and from Alabama points.

Should there be a failure to increase the intrastate fares to the interstate level already in effect they feel that there would be created a direct violation of the provisions of the Interstate Commerce Act.

I have already illustrated how the interstate fares may be defeated by purchasing intrastate tickets for portions of interstate trips. As will be shown by a subsequent witness, these railroads over a long period of years have shown a deficit from passenger operations, thereby placing an added burden upon freight and other classes of service.

While it is recognized, and admitted, that the railroads, including the Alabama lines, have experienced a greatly increased passenger travel, with substantial increases in gross passenger revenues during the years 1941 and 1942, they have, at the same time, been confronted with many and substantial increases in operating expenses, some of which I have mentioned, including, among other things, wage increases as well as large increases in taxes, which will be even greater under the Revenue Act of 1942.

It must be recognized, also, that the increases in gross [fol. 1916] revenue during recent periods are directly attributable to abnormal conditions growing out of the war, and that when the war is over and the country returns to normalcy, certainly the railroads may expect a return of competition, and in even stronger volume, due to the lifting of rubber and gasoline restrictions, the rebuilding of present highways and the construction of other and better high-

We may also reasonably expect volume production of bigger, better and cheaper automobles and buses, and strong

passenger competition from the airways.

As I have previously shown, this coach fare in Alabama, and elsewhere in the south, would today be on the basis which is here being proposed, and which is already very generally in effect as previously stated, except for the fact that these railroads had established a special and extremely low coach fare of 1.5 cents per mile under conditions and for reasons which no longer exist.

Q. Will all coach travel be affected by the proposed in-

crease if it is approved and made effective?

A. By no means. In the protest above referred to some thing was said about the movement of "relatives and friends of men in the armed forces who desire to visit the various encampments." The Alabama railroads are not seeking to charge such relatives and friends of men in the service any more than they are now paying generaly for passenger transportation in the north, east, and west, and interstate [fol. 1917] in the south. Moreover, if the proposed fares become effective, such relatives and friends will still be able to travel to and from the army camps by buying round trip tickets at less than 2 cents per mile. Furthermore, the soldier or sailor or marine or coast guard, or any member of the armed forces in uniform on furlough will still be able to travel over petitioners' lines at 1-1/4 cents per mile.

It may be mentioned also that the revenue which is derived from coach transportation represents less than 50 per cent of the total passenger revenue, and there is no proposal here to increase the one-way fares in sleeping or parlor cars. Moreover, the revenue derived from coach transportation includes a substantial volume of travel by furloughed military personnel at the above-mentioned fare of 1½ cents per mile, which it is not here proposed to change.

Q. In the suspended tariffs, certain changes are proposed in round trip fares, both in coaches and pullman cars. Please explain the nature and purpose of these changes.

A. Prior to October 1, 1942, there were in effect round trip fares in the southeast and other territories con-

structed on various basic rates per mile and with varied return limits. Effective October 1, 1942, the lines generally in all territories adopted two round trip fares, one good in pullman and one good in coaches only, and used a unifol. 1918 form limit of three months on both classes. These fares have been approved by the Interstate Commerce Commission and are now in effect for interstate travel. The round trip coach fares, so approved, are made on the basis of 180 per cent of the one-way coach fare of 2.2 cents per mile for the round trip, or 1.98 cents per mile traveled.

The round trip fares good for interstate transportation in sleeping or parlor cars approved by the Interstate Commerce Commission, as above stated, are on the basis of 2.75 cents per mile.

Under the suspended tariffs the carriers are seeking to establish exactly the same basis of fares for intrastate

transportation in Alabama.

In other words, they propose to cancel their current fifteen day limit coach fares (1.485 cents per mile) and their sixty day limit coach fares (1.65 cents per mile) and to substitute in lieu thereof round trip three months limit fares on the basis of 180 per cent of the proposed one-way coach fares of 2.2 cents per mile for the round trip, or 1.98 cents per mile traveled; also to cancel their current thirty day limit fares (2.475 cents per mile) and their current six months limit fares (2.75 cents per mile) good for transportation in sleeping or parlor cars, and to substitute in lieu thereof round trip three months limit fares on basis of 2.75 cents per mile.

[fol. 1919] Q. Mr. Barry, do the railroads generally have

in effect in Alabama any commutation fares?

A. No sir.

. Q. Do you know of any on your Southern Railway System Lines?

A. I don't recall that we have any commutation fares in Alabama.

Mr. Oliver: That completes the direct examination. Commissioner Harrison: You mean on your line?

The Witness: On Southern Railway.

President White: I think there are some commutation fares in effect between Birmingham and the powder plant near Childersburg, whatever the rail station is there,—but

I believe that is over the Central of Georgia and the AB&C. Tallacoosa is the name of the station, I believe, and it is the only commutation fares that I know of in the State of Alabama. Is it proposed here to affect those fares, or can you say?

The Witness: The Southern Railway having no fares of

that kind in Alabama, I don't know.

President White: You don't know whether the other roads propose to make an increase in those commutation fares!

The Witness: No sir.

Mr. Oliver: The witness is ready for cross-examination.

## By President White:

[fol. 1920] Q. As I recall your history of the passenger fares, both throughout the southern territory and in Alabama, the coach fare of 1.5 cents per mile and the one-way fare in Pullman cars, just the transportation, were maintained at 1.5 cents per mile coach fare, and 3 cents per mile for transportation in a Pullman for a period of about three years from the early part of 1939 to 1942?

A. Well, no, first, December, 1933, up until November 15,

1937, I believe.

Q. And then they were changed again?

A. Yes sir, changed back to 2 cents.

Q. But you did maintain them, as I recall the history, from the early part of 1939 to about February 1, 1942?

A. Yes sir, that is correct.

Q. During that period, it would appear from what the roads actually did, they regarded the relation of the one-way pullman transportation to the coach one-way transportation as being two to one? In other words, that represented their judgment as to the proper relation of the fares, is that correct? Would that be your judgment on the facts?

A. There was that difference in the fares, but the 1.5 are was placed in effect as an experimental fare, either to recapture back to the coaches some traffic that was lost.

Q. But it was kept in effect for three years?

A. Yes sir.

[fol. 1921] Q. As I understand your proposal here now, it is that you want to increase your coach fare one-way, intrastate, in Alabama, to 2.2 cents per mile, but you pro-

pose to leave your fare in the Pullman, one-way transportation, at 3 cents per mile?

A. No sir, the Pullman fare now is 3.3 cents in Alabama.

- Q. There is the 10 per cent increase granted in Ex Parte 148?
  - A. Yes sir.
- Q. Then, it will be in the relation of 3.3 to 2.2 with this increase?
  - A. Yes sir.
- Q. Why is it that you change your views about the relations that ought to exist under the present conditions as to the coach fare and the fare in Pullman cars? That is quite a difference in relationship. One is two to one, and the one that you are proposing would be two to three,—in other words, the coach fare would be two thirds of the Pullman fare.
- A. The coach fare of 1.5 cents per mile was not established on a definite relationship to the Pullman fare. It was established on an arbitrary experimental basis in an effort to get back from the automobiles and buses some of the travel that they had lost.

### By Commissioner Harrison:

[fol. 1922] Q. The 1.5 fare at first was put in as an experiment?

- A. Yes sir.
- Q. And then did not the volume of your business increase month by month during the time that fare was in effect?
  - A. There was an increase.
  - Q. Both as to number of passengers and as to revenue!
- A. I would say that that is correct. It might take 30 to 60 days to reflect the revenue increase.
- Q. Then, in spite of that fact, the railroads came in and asked that the fare be increased to 2 cents, did they not, in November!
  - A. Yes sir.
- Q. And then they tried it out for some three to six months, and the number of passengers and the revenue both began to fall off and on their own motion they came in and asked that the fare again be reduced to 1.5 further as an experiment?
  - A. I think it was referred to as an experimental fare.

Q. The first time it was, but they had that 1.5 cent fare in effect for four years and then they asked to increase it to 2 cents in November, and then in January of the next year, they asked that it be increased to 2.2 cents?

A. Your records will show it, whatever it was.

Q. Are you willing to have the exhibits that the railroads filed in that increased fare rate case made a part of the record in this case?

[fol. 1923] I don't think it is necessary, when they went back to 1.5 cents per mile, that was always referred to as an experimental fare.

Q. But they put it in effect for two years and then increased it to 2 cents?

A. Yes sir.

Q. And then you say that they put that fare in again as an experimental fare, the second time?

A. Yes sir.

Q. Have you anything to show that in your records?

A. No sir, not with me.

Q. Are you familiar with the fact that from the time the railroads placed in effect a passenger fare of 3.6 that the revenue and the number of passengers began to fall off?

A. Yes sir.

Q. And that when you dropped it to 3 cents, the number of passengers increased but your revenue did not, and then when you dropped it to 2 cents, the number of passengers still increased, but your revenue did not, but when you dropped it further to 1.5 cents your records, for the first time, showed both the number of passengers and your revenue increased?

A. That, I think, is correct.

Q. And your company filed an exhibit here to that effect when they came and asked the rate be fixed at 1.65?

A. Our particular company never put into effect the 2.2. [fol. 1924] Q. But the railroads all came in and showed that?

A. Yes sir.

Q. And you have referred now to some luxurious train passing from Anniston to Birmingham and on through to Meridian?

A. Yes sir.

Q. And those trains go over the AGS!

A. Yes sir, that is a part of the Southern Railway System.

Q. That is a part of the Southern Railway System?

A. Yes sir.

Q. Are you familiar with the kind of service that you render from Wilton to Selma and from Selma to Demopolis? That is on the road that you represent, that you said runs across the state.

A. I can only answer that by saying that the travel on that division just absolutely almost disappeared, the passenger traffic.

Q. Are you familiar with the kind of service that you render over there now? I am asking you if you know what kind of passenger service you render on that road?

A. Yes sir.

- Q. What is it?
- A. You have one train a day over there.
- Q. What kind of a train is it?
- A. You have coaches on there.

Q. How many?

[fol. 1925] A. I think it is one and a half, as I recall it.

Q. How many cars are on that train?

A. I can't answer that because I imagine that that varies from day to day.

President White: In other ords, is it a mixed train? The Witness: Yes sir.

#### By Commissioner Harrison:

- Q. That is a kind of a train that the Southern Railway runs all the way across the state, and you want a fare fixed on that train the same as on those luxurious trains that run from Anniston to Birmingham and to Tuscaloosa and which only stops at Anniston, Birmingham and Tuscaloosa in passing through the State of Alabama, and then goes on to Meridian, Mississippi!
  - A. You tell us that we can't discriminate.
- Q. But haven't the railroads discriminated for 20 years on intrastate fares and interstate fares in the State of Alabama?
  - A. No sir, I wouldn't say so.
- Q. Would you say that the fares on all the railroads in Alabama, all intrastate fares have been the same for the past ten years?
  - A. No sir, because different conditions have existed.

Q. Why do you try to come in now in this case and say that you want uniform fares in Alabama so that there will be no discrimination, when you never have had uniform [fol. 1926] fares in Alabama?

A. We haven't had it since the 3.6 fare, we did at one

time have uniform fares in Alabama, at one time.

Q. When did the 3.6 fare go out?

A. I think it was in October, 1933; that was in 1933.

Q. Now, you have another luxurious train coming into the State of Alabama from Tennessee over the L&N Railroad that does not stop except for interstate passengers until it hits Birmingham, Alabama; and then it doesn't stop from Birmingham to Montgomery, another 100 miles, except to take on or let off interstate passengers, and then it goes from Montgomery to Mobile under the same conditions,—the same thing applies?

A. Yes sir.

Q. Now, that service is not available to the people of Alabama, is it, except to those points that I have named?

A. That is right.
Q. That is right?

A. That would be confined to the points that it stops at.

Q. And if it only stope to take on and put off interstate passengers, then no local passengers could ride it between those points?

A. No, a passenger could ride that train from Birming-

ham to Montgomery.

Q. No, I mean at these intervening points like Calera and Clanton?

[fol. 1927] A. That is right.

Q. That train doesn't stop to take on any Alabama passengers or to discharge them at any Alabama points except, those that I have named?

A. That is right.

Q. Isn't it discriminating against the people of Alabama in the methods under which you operate and the manner in which you furnish service to the interstate traffic?

A. I think that those conditions meet the demands and the necessities and I think that the Commission is fully informed of those things, and we possibly have the same condition on some other train that doesn't stop at every little point.

- Q. But isn't it discrimination, isn't there discrimination there against the intrastate passengers in the State-of Alabama?
  - A. I wouldn't call it that.
- Q. If an interstate passenger can ride in an air-conditioned coach through the State of Alabama, on one of these luxurious trains, and the Alabama man can't, the local intrastate Alabama passenger can't enjoy those services, do you say that the Alabama interstate passenger is not discriminated against?

A. I don't think so.

- Q. If the train doesn't stop, how can he avail himself of its services?
- A. In most of those instances, I would say that the serv-[fol. 1928] ice would not be patronized.
- Q. Because he is not afforded the opportunity, isn't that it?

A. You have your Alabama—

Q. Just take your road from Demopolis—are you familiar with the service that you render to Demopolis? You know that you just hook a passenger coach onto a freight train going across there and the schedule was that it left Demopolis and came over to Marion Junction, and unhooked from the passenger coach and the freight train part returned to Demopolis, and the passenger coach was side-tracked until a through freight from Mobile came by and picked it up, and it is taken on up the road a ways and it is unhooked from this through freight and sidetracked again at Wilton, and then another freight train comes along and carries it from Wilton on up to Rome, Georgia,—now, isn't that the kind of passenger service that you are rendering here in the State of Alabama?

A. The travel on that line had diminished or almost disappeared before that kind of service was established, or

before the service was established on that basis.

Q. You have no passenger traffic there now, have you?

A. (No response.) :

President White: Isn't it correct that just taking passenger train service, not including any mixed train service, the trains that carry most of the passengers traveling in[fol. 1929] terstate now, are the trains that have the better coaches and they have better engines, as a rule, and, as a general rule, they make comparatively few stops within the state, isn't that true, as a general proposition?

The Witness: I think that is true of the through trains, yes sir.

## By President White:

Q. But your proposal here though would put the fare the same on these luxurious trains—take for illustration the limited passenger train between Montgomery and Birmingham, and I think there is a local out of Birmingham maybe to Decatur and then it goes to Nashville interstate, but those local trains have less comfortable appointments and less expensive cars and the inconvenience and discomfort of travel to the passengers where they are stopping at almost every station,—you are taking no account of that here in the establishment of your fares?

A. Well, I might say this: That a great deal of the coach equipment on all railroads now is being used by the armed

forces.

Q. I know that is true.

A. And every railroad is limited as to the equipment that they have available for their regular trains. At least, I think we all agree that the greatest demand, where the heaviest travel is and where the greatest number of people [fol. 1930] are served, that that section would come first over a place where there is no demand for the service. We haven't sufficient equipment to serve all the different portions of our railroad alike.

Q. I know that, but when you come to the discrimination in the travel between intrastate and interstate on the railroad, there are a good many factors in it. That is the point that I am bringing out now. Some of them are provided better service than others. Some of them provide greater disparity under present conditions than under normal times, but even in normal times there is a disparity there now.

I am not saying that the railroads are not doing the best they can in handling their business, but I am just pointing out this theory that you are presenting here which I know is a part of the law as long as the facts comply with the law you have the facts to which to apply the law, but just the mere fact that a fellow in a few instances or in some instances may ride from Mobile to Montgomery in a coach with a fellow who is going from Mobile to Nashville, then you say that is discrimination. Maybe so. But when you have so many other facts to be considered in con-

nection with the proposal, those things have got to be given

consideration too.

A The question that you mentioned there is not confined to intrastate train service. You will find the same conditions in many instances in interstate train service.

Q. The crowded conditions? [fol. 1931] A. The equipment.

\Q. At this time, of course, it is just a question of hearing what you have to say in connection with the matter. I might say that I have just returned from an interstate trip and I was able to get a space to sleep in, but outside of that, there was plenty of inconvenience, but I was grateful for all the accommodations I did get.

### By Mr. Bruce:

Q. When these so-called 2 cent experimental fares went into effect in Official Territory, did some lines in Official Territory refuse to have a part in the increase from 1½ cents to 2 cents,—do you know?

A. Going back from 2 cents?

Q. For the period from 1937, when you went back, you had experimented for years there with 1½ cent fares, the railroads in general throughout the nation, and then in 1937, you went in to increase it from 1½ to 2 cents,—did some of the railroads in Official Territory, for instance, did the Baltimore & Ohio and some others refuse to go along with you on that increase?

A. They never did get down on that experimental basis

to 1.5 cents in Official Territory.

Q. There was a loss in the passenger revenue and number of miles and in gross revenue?

A. On the 1/2 cents a mile?

[fol. 1932] Q. Yes.

A. That was in Southern Passenger Association Territory only; it did not go into Official Classification Territory.

Q. Then, the nation as a whole did not go into the 2 cent increase except during a temporary period. Did the western district go from 1½ to 2 cents?

A. They never did go to the 11/2.

Q. Are you sure of that?

A. Yes sir; there might be an exception in some cases, but there was never a general drop, they maintained the 2 cent fare in Official Territory, in Official Classification Territory, and also in the west.

Q. I think you are wrong in the west. Possibly you want to check that and make a correction in your testimony.

Mr. Oliver: I understand that it never went into effect in Official Territory and that their fares generally were 2 cents.

Mr. Bruce: Oh, I know of some fares that were 1 cent a mile, between certain points in Montana to Seattle and Spokane and later on these fares were increased. They were put in to see if the carriers could regain some of their business. I don't know whether you want to let that statement stand with reference to the Western Territory or not, that they never had 1½ cent fares out there.

Mr. Oliver: I don't know what the witness' knowledge

[fol. 1933] is on that subject,

President White: Well, I don't think it would be of much weight here anyway.

Mr. Oliver: I know that the fare in Official Territory was never less than 2 cents, but I can't say as to the west.

Mr. Bruce: You state that?

Mr. Oliver: Yes.

Mr. Bruce: Do you know whether the Baltimore & Ohio in 1937, whether they joined in the 2 cent coach fares when they were to be raised from 1½ to 2 cents?

Mr. Oliver: In the first place, I don't think they ever had

a 11/2 cent fare on the B&O Railroad.

President White: Cross-examination.

### Cross-examination.

### By Mr. Bliss:

- Q. Do you know how the increase in passenger travel in the South compares with the increase in the rest of the country?
  - A. For what period of time?
  - Q. Increase in 1942 over 1941?
  - A. I would say about the same.
  - Q. You don't have the figures?
  - A. No sir.
- Q. Do you know how the number of passengers to the car in the South compares with the country as a whole?

A. No sir.

[fol. 1934] Q. You have implied that there were some heavy costs on military movements. Those military trains are pretty well filled, aren't they?

A. They vary Some are very well filled and others are very, very light.

Q. What do you mean by "light"?

A. Well, we will have a detachment that cannot be handled in a regular train that you must perform a special train service for and there we have a very few passengers on that train.

Q. In a case of a special train, don't you require a

A. Not for military movements, no sir.

Q. Don't you require certain percentage of freight movement in connection with a special train?

A. No sir, the freight movement does not enter into the military movement with regard to any requirements.

Q. The cars and the trains are very full in those military movements, aren't they?

A. As I mentioned, that varies.

Q. I was referring to the load in the cars, rather than the number of cars in the train.

A. That likewise varies.

Q. What per cent of their capacity would be full on a military movement on an average?

[fol. 1935] A. Well, generally speaking, the army has loaded about three passenges to two double seats; the coaches vary in capacity.

Q. Do you have any study of military movements that indicate that your expenses on those movements are greater than your revenue?

A. Do I have any knowledge of that?

Q. Yes.

A. Well, I am not familiar with just what revenue these troop trains take in in dollars and cents.

Q. You can't then assert that you are losing money on these movements?

A. I can't say one way or the other.

President White: Let me ask this if I may interrupt at this time.

Mr. Bliss: All right.

President White: Is it or not correct that on some of these troop trains that you transport not only passengers but equipment of one sort and another,—isn't that true?

The Witness: It is true in instances, yes sir.

President White: When you report that revenue for carrying equipment, of course, that wouldn't go into your passenger revenue account, would it? Do you know?

The Witness: I am not familiar with the accounting but I can say this, from the passenger standpoint, on troop [fol. 1936] movements, we give them baggage cars to handle their paraphernalia in, and we give them a baggage car to set up as a kitchen, and we get no revenue at all out of those cars.

President White: All right, go ahead.

Q. You mentioned that after the war you expected strong competition from private automobiles to return. Do you anticipate that you will be reducing these fares back to a cent and a half after the war is over?

A. We haven't gotten that far.

Mr. Bliss: That is all.

President White: Any redirect?

Mr. Oliver: No, I believe not, Mr. Chairman.

President White: I have, not an official report here, but it is a memorandum showing or it purports to show the number of special army trains operated and the total num; ber of cars therein and extra cars operated on regular passenger trains and total number of men in all such trains handled on the Southern Railway System Lines by months April, 1941, to October, 1942, inclusive; and the total number of cars is 57,412, and the total number of men is 1,370,-833; and the total number of trains, 3,589. Now, it seems there might be some cars included in the car column that would not be a part of these total trains. I rather suspect when this record was made up and the total trains were taken as those trains which were entirely troop trains and [fol. 1937] that total cars would not be only the cars in those troop trains but extra cars according to this advice. There might be additional extra cars that were on regular passenger trains or other passenger trains?

The Witness: I think I gave in my testimony the number of extra cars handled on regular trains during September and October that were used for handling troops.

President White: Any redirect?

Mr. Oliver: No, I have no questions. President White: Any other questions?

Mr. Oliver: I would like to offer Exhibits 1 and 2, which have been identified by this witness.

President White: They are received.

(Exhibits 1 and 2, Witness Barry, received in evidence.)

President White: I believe we will recess now until 2 clock before we go into the testimony of the other witnesses.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

[fol. 1938]

Afternoon Session

The hearing was resumed, pursuant to recess.

2 o'clock p. m.

President White: Who is your next witness? Mr. Oliver: I will call Mr. Simpson.

W. W. Simpson being first duly sworn, testified as follows:

Direct examination.

By Mr. Oliver:

Q. Please state your name, residence and occupation?

A. My name is W. W. Simpson; I reside in Birmingham, Alabama; I am Superintendent of the Birmingham Division of the Southern Railway.

Q. How long have you held your present position and what positions have you previously held with the operating department of the Southern Railway System Lines!

A. I have been in the present position about nine months; prior to that, I had been on two other divisions as superintendent. I started in the operating department 29 years ago and worked in various jobs, including Chief Train Dispatcher and Inspector of Transportation and Trainmaster on several different divisions.

Q. In your present position, over what portions of the lines of the Southern Railway System do you have immedi-

ate jurisdiction?

[fol. 1939] A. Between Birmingham and Atlanta, Birmingham and Columbus, Missisippi; and Parrish and Sheffield, Alabama.

Q. In what states do the lines of the Southern Railway

System operate?

A. Virginia, North and South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Kentucky, Tennessee, Ohio, Indiana, and Missouri.

Q. And in Illinois? Did you mention Illinois?

A. Yes sir, in Illinois.

Q. Approximately how much mileage does the Southern Railway System operate in Alabama?

A. It is 1331 miles.

Q. Are Southern Railway Company and other Alabama lines confronted with any unusual difficulties and expense in connection with passenger operations under the present day conditions?

A. They are.

Q. Now, will you amplify your answer, leaving out of consideration for the moment troop train movements.

A. Well, we have had increases in wages and other supplies and materials that we need and have to have; we have had to increase our forces, particularly ticket offices, telegraph offices; we have had to open up new offices; had to split the territory of train dispatchers in order to handle the business; our maintenance of way forces have been [fol. 1940] practically doubled; the same thing would apply to shops.

President White: Now, all of these expenses that you are listing would be expenses allocable both to freight as

well as passenger revenue?

The Witness: You couldn't separate them, no sir.

President White: I hold in my hand here-/

The Witness: Of course, the ticket offices would not be. President White: No, that is true; it wouldn't be allocated to freight. I hold here a document that is marked "Statement No. M-100, Bureau of Transports, Economics and Statistics of the Interstate Commerce Commission", which purports to show the operating revenue and operating expense of Class I steam railways in the United States and also by the different regions, for instance, the New England region, Great Lakes region, and so on, including two regions, one of which is called the Southern region and the other is called Southern district—the Southern district appears to include somewhat more than the Southern region, but in the Southern region, the ratio of expenses to revenue, per cent ratio, shows the following figures: For

the nine months ending with September, 1941, this ratio which we commonly refer to as operating ratio, is 66.8; for the corresponding period in 1942, the operating ratio is even 60 per cent. So, according to this statement, while [fol. 1941] your expenses in amount of dollars and cents may have increased, your operating ratio is much more favorable for the first nine months of this year than it was for the first nine months of 1941.

The Witness: That also includes freight, of course.

President White: Yes, that is the total operating ratio. Are you in position to exercise judgment as to whether your increase of expense has been more in the freight department or more in the passenger?

The Witness: Well, undoubtedly it is more in the freight. President White: You mean the increase of expense?

The Witness: No sir, I thought you were talking of the revenue. I am not in position to separate those figures.

Mr. Oliver: Mr. Chairman, we have

President White: We are talking about per cent increase in revenue, for those two same periods, the per cent increase in freight revenue in the nine months period in 1942 over the corresponding period in 1941 is 41.6, the increase in your passenger revenue with like period being compared is 109.3. In other words, it is more than double.

The Witness: The per cent has; of course, the bulk of the revenue is freight and naturally that, in dollars and cents, would be more than passenger although the per cent is higher in the passenger.

President White: Do you know whether the revenue, the passenger revenue for the first nine months of 1942 as com[fol. 1942] pared with your freight revenue, occupies a higher or lower per cent ratio than it did for the previous year.

The Witness: I couldn't testify to that.

President White: Well, it is quite apparent from this statement here that the relation of passenger revenue to freight revenue in the Southern region—it shows that for the first nine months of 1941 passenger revenue was \$53,000,000 plus, and freight revenue was \$418,000,000 plus,—that would be approximately a ratio of 1 to 8, and for the first nine months of 1942 your passenger revenue on the Southern Railway in the Southern region was \$112,000,000 plus as compared with freight revenue of \$593,000,000,

which would be approximately 1 to 51/2, or something like that.

Mr. Oliver: Mr. Chairman, if you please?

President White: Yes.

Mr. Oliver: We have an accounting witness here whom I think probably would be better qualified to answer any

questions along that line.

President White: I know, but this gentleman here is undertaking to go into relative expense now as compared with a former period, and Mr. Barry testified something about that too, so I don't know which witness to ask these questions of.

Mr. Oliver: I appreciate that, but this witness is pointing

out items rather that come within his observation.

President White: That come within his observation? [fol. 1943] Mr. Oliver: Yes sir, rather than tabulating it into dollars and cents.

President White: As an operating man?

Mr. Oliver: Yes sir, and Mr. Beight will be able to answer your questions along that line, I believe.

President White: All right.

By Mr. Oliver:

Q. Was it a fact that you put on extra conductors on your trains?

A. We have had to put on additional conductors on all our important trains in the Birmingham Division, and while I haven't jurisdiction over the AGS, they have done likewise on them in order to take care of the heavy travel, which, of course, primarily on the regular trains, is civilian travel, and we are having to use equipment that is owned by other railroads, and it involves additional per diem payments.

Commissioner Harrison; Do you refer to passenger equipment now, or freight?

The Witness: Passenger equipment.

Mr. Bruce: This equipment that you are using at the present time, this passenger equipment, is that primarily due to the fact that you need additional equipment to handle troops?

The Witness: Well, that is true to a certain extent. If it wasn't for the heavy troop movements, we would have [fol. 1944] sufficient passenger equipment to handle the

civilian travel.

President White: Has the Southern Railway put on any new local trains? Have they inaugurated any new service since the first of this year?

The Witness: No, sir, not in this section.

Mr. Bruce: The same scheduled trains are running?

The Witness: Yes sir, the same schedules are running but we are operating additional sections.

Mr. Bruce: The same number of trains but maybe addi-

tional sections?

The Witness: Yes.

Mr. Bruce: Many of the new trains that you have are, troop trains?

The Witness: Yes sir, the largest number of them, of the extra trains, while we do have to run two sections of our new trains several times a week.

. Mr. Bruce: And that causes this extra employment that

you have had in your train forces?

The Witness: That causes extra employment is a deadhead movement in one direction. Regular trains are set up on schedule and, of course, the travel is more or less balanced in each direction, and when you run an extra train, you have a light movement in one direction to get yourpower back.

Mr. Bruce: Do you run local extra trains on your local trains to serve intrastate commerce passengers in Ala-

bama t

[fol. 1945] The Witness: Unless it is troops involved.

Mr. Bruce: I mean on a local run between Birmingham and Mobile, you don't put on an extra section on a local train!

The Witness: No, there is not sufficient travel for that.

Mr. Bruce: Then your extra sections that you have had on your regular scheduled trains are interstate commerce trains, your through trains?

The Witness: They are sections in interstate trains.

Mr. Bruce: All right, thank you.

President White: As a matter of fact, isn't the real need for the extra sections due to the interstate travel rather than to local travel on those interstate trains,—isn't that true?

The Witness: It is due to both.

President White: I know it is due to both because you get some local passengers, but Mr. Barry stated in his

judgment—and, of course, we know about how these interstate trains operate because frequently we are called upon to permit them to cut out stations here and there and cut out little towns here and there where they don't serve maybe but one or two towns in maybe between Montgomery and Birmingham or between Montgomery and Mobile on the through trains, in the interstate travel,—as a matter of fact, the need for the operation of the extra sections on those [fol. 1946] trains would reasonably have to be attributed most to the interstate commerce traffic, isnt' that true!

The Witness: I would say the majority of it, yes sir.

President White: Then, if that is true, this question of discrimination that has been brought up about intrastate and interstate, there is another factor to consider in connection with that, is it or not? Maybe I am asking you for a conclusion or for your judgment. I will go ahead.

Commissioner Harrison: You said that you had not added any extra local trains. But, has the Southern Railway taken off any local trains since the emergency started?

The Witness: No sir, I don't think so; I don't recall any. President White As I understood it, Mr. Bruce's question was confined since the first of January, and you haven't taken off any since the first of January.

Commissioner Harrison: But you have taken off some since the emergency started, haven't you?

The Witness: When do you consider that the emergency started!

Commissioner Harrison: Do you remember the date when one of your officials came to Birmingham and petitioned us to take off the passenger train between Birmingham and Columbus and we permitted it?

The Witness: That was during the coal strike?

[fol. 1947] President White: No, the chief grounds that you gave there for the removal of that train was the movement of troops and the need of the equipment.

The Witness: I wasn't on the Birmingham Division at that time.

Commissioner Harrison: And you now operate only one train of course, where you operated two formerly over that the.

The Witness: Was that when they took off one between Birmingham and Meridian?

Commissioner Harrison: And the Columbus train also.

Mr. Bruce: And that was because of the statement that the equipment was needed to handle interstate traffic, was it not?

The Witness: Yes sir, I don't say entirely interstate traffic, but it was troop trains. We have a lot of troops that are handled within the state.

President White: That is true.

Mr. Bruce: So you have less local trains on now than you had on on January 1, 1942, operating in Alabama—that is, some of those trains have been retired?

The Witness: Not January, 1942.

President White: No, not January, 1942, but January, '41.'

Mr. Bruce: January, '41!

The Witness: Yes, those local trains handled some inter-[fol. 1948] state traffic too.

President White: That is true. All right.

### By Mr. Oliver:

Q. Now, Mr. Simpson, referring to your extra sections of trains, it is more or less expensive to run a train in two sections than in one section?

A. It is more expensive to run a train in two sections, than in one section, because you have an additional erew and you have additional fuel consumption and in addition to that, you have got one more train unit on the railroad which has gotten to be a big factor now in the operation of trains, particularly on single track railroads.

\ Commissioner Harrison: Do you know any instance in the last three or four months that you have operated two

sections on intrastate business?

The Witness: Not exclusively between intrastate points: all of our trains we run two sections on them and they necessarily leave Birmingham and go over into Georgia—that is the terminal for the Birmingham Division, or vice versa. As to the travel on there, I wouldn't know about how much was local and how much was through travel.

Q. They do handle some interstate and intrastate pas-

sengers, do they not?

A. Yes sir.

Q. Still referring to your two section trains, would you [fol. 1949] say the unit cost per passenger is greater when you operate two sections than when you operate one?

A. It would be, definitely.

Q. Explain how that comes about?

A. Well, it is due to the extra expense of operating an additional train; in other words, double your expense, whereas you wouldn't be able to handle that at the same cost that you would handle one train for.

Q. Take the case of where your regular train might consist of twelve coaches and you have four additional coaches, would you operate an extra, or extra section of your train to take care of that travel?

A. We would operate an extra section to take care of it.

Q. How would you divide the number of coaches?

A. We would divide it approximately seven and eight if the travel was such that we could split it up that way. Our ordinary means or method of splitting it up is the head-on cars on one section, and the sleepers and the diners on the others, and by head-on, we mean the mail, baggage express and coaches.

Q. And that would mean that you would be using a full train crew for seven or eight cars in one instance and a full train crew on the regular train which would consist of twelve cars?

A. It is frequently necessary to run two trains on account of one car.

[fol. 1950] Mr. Bruce: Let me ask him a question right there. If you had four passenger cars in one section, wouldn't you have express and revenue tonnage in the section, the second section, to make up for your tonnage? You have a lot of that movement now, haven't you?

The Witness: That is all involved in the passenger business; all of our regular trains have a regular consist including express, baggage and mail.

Mr. Bruce: And you would have additional revenue in addition to the passenger revenue on that train because you would have express cars and vegetable cars or troops onto that section section, would you not?

The Witness: As I say, that is included in the regular consist and if we had thirteen cars from the Birmingham Division, we will say between Atlanta and Birmingham, we would operate them in one section; and if we had fourteen, we would possibly double head; if it got over that, if it got to fifteen cars, we would have to run two sections—

that is for operating reasons—that would include the express and the baggage.

Q. Now, going to your troop train movement, Mr. Simpson, is there any unusual or abnormal expenses in the

handling of troop trains?

A. It is; more so than the other trains for the particular reason that the movement is all in one direction and it [fol. 1951] requires a return movement of equipment as a rule and it requires light engines."

Q. When you say return movement, do you mean return

empty movement?

A. Yes sir, return empty movement for which we receive no revenue; we have to assemble the equipment at some central location and have it cleaned, iced and watered and then run into the camp and, unfortunately, most of the camps on our railroad, that we serve, are not served directly from the main line, requiring long switch movements into the camp which creates an extra handling.

Q. For which no revenue is involved or received?

A. That is right.

Q. Can you illustrate that by Camp McClelland, for instance, at Anniston, Alabama?

A. At Camp McClelland, we are eight miles from the camp; we have to make a switch movement there of eight miles from Anniston to the camp on cars received from our main line where or when special trains operate over our main lines. We have to handle them with a switch crew up there.

President White: Are you able to say-you are testifying about these expenses, extra service, are you able to say whether the handling of these troop trains either intrastate or interstate is done by the railroad at a loss?

The Witness: I am not able to say, sir.

[fol. 1952] Q. Are there any other items of unusual expense in the handling of troop trains that you don't encounter in the handling of regular trains?

A. Well, of course, we give troop trains right-of-track over other movements, and it delays our freight operations to the extent of running them into overtime and increasing the coal consumption, requiring longer time on line of run and depriving us of the motive power and various other items that we operating people have to contend with when you have a road full of trains as we have on the Birmingham Division.

President White: Would you say that any of the additional expense is brought on on any of the respondent railroads on account of the movement of your local passenger trains in Alabama?

The Witness: Well, as I say, the local passenger trains move pretty well on schedule, and that is all provided for in your operations, and not as much so as it would be

with extra trains.

President White: Now, isn't it true, taking all of your testimony into consideration about these additional expenses, additional conductors and other additional expenses that are put on the railroads, that it all grows out of the handling either of troop trains or interstate through trains, rather than from the operation of your local passenger trains? I am talking about local passenger trains. Of [fol. 1953] course, we all know that some local passengers are handled by through trains, but isn't that extra expense largely incident to the operation of either the troop trains or the interstate through trains?

The Witness: I would say both are involved in it.

President White: Of course, both are involved,—I am just asking your judgment,—you are an operating man, as I understand it.

The Witness: We do more troop trains than other local trains.

President White: Don't you have more additional sections on through interstate trains operating right now than you have had in years and years?

The Witness: That is right.

Commissioner Harrison: And is it true also that you have fewer local trains in Alabama than you have had at any-time in the last five years?

Mr. Bruce: To make it clear for the record—

Commissioner Harrison: Let him answer my question The Witness: Yes, we have, if you go back that far...

Commissioner Harrison: The L&N Railroad has taken off the local train between here and Birmingham in the last few months, haven't they?

The Witness I really don't know

Mr. Bruce: If you didn't have any troop movement at all of any description, would your regular cars be sufficient [fol. 1954] for you to handle the traffic or would you need additional cars at the present time?

The Witness: We would have to run extra sections.

Mr. Bruce: Would that be on your interstate or your. intrastate trains?

The Witness: It would be on—as I said, we haven't got any intrastate trains that terminate within the state.

Mr. Bruce: You have local trains, do you not?

The Witness: We have them between Columbus, Mississippi, and Birmingham, Alabama, and we have them between Birmingham, Alabama, and Atlanta, Georgia, but none of them terminate within the state.

President White: Don't you have some passenger trains that operate between Birmingham and Mobile and Mobile and Birmingham?

The Witness: Yes sir, but that is on the Mobile Division. Commissioner Harrison: You have one that operates from Selma to Demopolis, Alabama, don't you?

The Witness: Yes sir.

President White: There is one that operates between Birmingham and Columbus, Mississippi, which just barely gets over the Mississippi State Line?

.The Witness: Yes sir.

Commissioner Harrison: And it is the same way from Birmingham to Meridian, isn't that correct?

[fol. 1955] President White: Between Birmingham and Meridian.

The Witness: But the interstate travel is less productive than the other because there is not as much of that.

# By Mr. Oliver:

Q. It is a fact, isn't it, Mr. Simpson, that all of your interstate trains that have been referred to here do handle intrastate as well as interstate passengers?

A. Yes sir; any train that we operate has both intra-

state and interstate passengers on it.

Q. Going back to your troop train movement, are there any other abnormal expenses in connection with troop trains that you have not mentioned?

A. It involves a larger inspection force; the handling of cars increases the terminal switching due to the extra trains; and I mean by handling cars, that is in regular trains, they have to be switched at various terminals and routed to some other line or to some other train, they are not always going the same route that the regular train is going. The inspection forces are set up more or less

to protect regular schedules and on extra schedules you have to supplement the services to take care of them.

President White: May I ask counsel if it is the theory of the respondents that the local civilian passengers moving intrastate in Alabama should pay higher fares in order to make up the difference between the fares actually paid [fol. 1956] by the United States Government on troop travel,—is that the theory of the respondents?

Mr. Oliver: No, it is not.

President White: And if so, it appears that your remedy would be to go to Congress which is now imposing a lot of taxes in order to give the farmers parity and a lot of other people parity.

Mr. Oliver: No, I think the passenger revenues of the Southern Railway Company and the other lines operating in Alabama are inflated by the revenue from troop movements, and this witness has pointed out some of the abnormal expenses that are included in the troop movement.

President White: Can you give us your operating ratio on passenger operations for the first nine months of 1941 as compared with your operating ratio on passenger service for the first nine months of 19421.

Mr. Oliver: I will give you some passenger statistics for eight months, Mr. Chairman.

President White: All right.

Q. Now, going back again to the troop movement, are all of the expenses incident to the troop movement reflected in passenger operations or does some of it show up in the freight expenses?

A. Some of it is reflected in freight expenses due to the delays that freight trains might receive by having several [fol. 1957] troop train- on the road, they would naturally have the right of track and would cause the freight crews to run into overtime and consume more coal and, naturally, that expense would be reflected in the freight train operation.

Q. What about the matter of troop trains in terminals, does it tend to slow up your terminal operation because of the length of the train?

A. Yes sir, it does considerably, particularly at the larger. terminals, that we know—the passenger terminals, I am speaking of, at the time they were constructed, we didn't figure fifteen to twenty car trains that we have to handle

in troop movements and, naturally, when they get in the terminal station, the tracks will not hold them, they swing out on the lead blocking the other tracks and practically paralyzing operations, to a certain extent, until you can get that particular troop train out of the shed. They are standing on one track and probably have three or four more blocked on the lead. We are spending a large sum of money now in Birmingham to lengthen the tracks under the shed, and we are putting in a new interlocking plant there to handle longer trains.

Mr. Oliver: That is all.

President White: When you have to make improvements now—you may not know this and maybe some other witness could give us the information on it, but maybe you know about it—where you have to make improvements now be[fol. 1958] cause of the war effort and if those improvements would be surplus capacity after the emergency is over, will you not be able to obtain a credit against your federal income tax or some part of it by amortization over a period of five years!

The Witness: I don't know about that.

President White: Maybe counsel or somebody else can answer it.

Mr. Oliver: I think you are correct about that, if it is directly traceable to the war effort.

President White: Yes sir.

Mr. Oliver: That's all for this witness. President White: Cross-examination.

Cross-examination.

# By Mr. Bliss:

- Q. Have you abandoned any mileage in Alabama recently?
- A. Have we abandoned any mileage in Alabama?
- Q. Yes.
- A. I don't recall any.

President White: You mean main track mileage, of course?

Mr. Bliss: Yes sir.

The Witness: Yes sir.

Q. You have testified as to certain expenses. Do you know to what extent these are offset by increased revenues?

A. No sir.

Q. You mentioned an example of how the unit cost of [fol. 1959] the passengers might be increased by having to run two trains of seven or eight cars each rather than one train of twelve cars, and now you have mentioned that you have trains of from fifteen to twenty cars.

A. We handle those with freight power.

Q. With freight power?

A. Yes sir.

Q. And in the other instance given, you were handling it with passenger power?

A. Yes sir.

Q. Your troop trains are usually in the fifteen to twenty car brackets?

A. A good many of them; I would say half of them.

Q. Isn't the unit cost lower in operating a fifteen cartrain than it is in operating an eight car train?

A. It would be if you had more passengers on there, of course.

Q. You spoke about unit cost,—do you know anything about the unit cost today as opposed to last year?

A. Do you mean what the unit is today and what it was last year?

Q. Yes.

A. I don't know what the unit cost was last year, no, I don't know that.

Q. Now, you spoke about leasing equipment from other [fol. 1960] roads. Where are you getting that equipment?

A. We have to call on other roads for it.

Q. Other roads in the South or Northern roads, or what!

A. Mostly Northern roads.

Q. Mostly Northern roads?

A. Yes sir.

Q. Does that mean that you have more passenger business relatively than they do?

A. We are able to get some cars from them all right: I don't know what their business is, but they have been able to help us out with equipment.

Q. What is the per diem on passenger cars that you lease from those Northern roads?

A. It is on a mileage basis; it is from five to ten cents a mile depending on the class of equipment that you get; that mileage basis applies to both loaded and empty.

Q. You testified as to certain increases in the cost of supplies which the carriers buy. Can you give us some more details on those?

A No sir, I couldn't give you the details, but it is just like the cost of living, everything has gone up in the operation end of the road.

Q. Has the cost of steel rails increased

A. It has in recent years; I couldn't go back to just the breaking point, but it has increased.

[fol. 1961] Q. Has it increased since 1938 that you know of!

A. I don't know.

Q. Do you purchase any of the supplies?

A. No sir.

Q. Then, you don't know how the prices that you pay are related to the price ceilings established by the Administrator!

A. (No response).

Q. To your knowledge, do the railroads ever complain to the Office of Price Administration that the cost of supplies to them, prices of supplies to the various railroads that they buy was being allowed to increased too?

A. (No response).

Mr. Bliss: That is all.

Mr. Oliver: I have nothing on redirect.

President White: Any other questions from the bench? Commissioner Harrison: No.

President White: The witness is excused.

(Witness excused.)

Mr. Oliver: Will you come around, Mr. Beight.

J. L. BEIGHT, being first duly sworn, testified as follows:

Direct examination.

### By Mr. Oliver:

Q. State your name for the record?

A. J. L. Beight.

[fol. 1962] . Q. Give us your residence and occupation?

A. I reside in Washington, D. C.; I am Statistician for the Southern Railway System. Q. How long have you held your present position and how long have you been in the accounting department of your company?

A. Since August 1, 1933, at my present position, and since May, 1917, in the accounting department of the South-

ern Railway System.

- Q. Have you prepared or had prepared under your supervision or direction certain exhibits which you desire to introduce in this proceeding!
  - A. I have.
  - Q. Will you proceed, please, with your first exhibit?
- A. Yes sir.

President White: This document will be marked as Exhibit 3.

(Exhibit No. 3, Witness Beight, marked for identification.)

Q. Start with the first page of your Exhibit No. 3, Mr. Beight, and explain what that page is designed to show?

A. Page 1 of Exhibit No. 3 shows for the Class I railroads operating in the State of Alabama, the net railway operating deficit for passenger service for the years 1936 to 1941, inclusive, and the average thereof:

It shows that in each of those years that all of the railroads operating in Alabama had a deficit from passenger

[fol. 1963] service.

Q. And your exhibit there is made in accordance with the formula prescribed by the Interstate Commerce Commission, is that correct?

A. That is correct, sir.

Mr. Bruce: Does the Southern Railroad for these same years show anything but deficits on that passenger opera-

tion on any part of its system?

The Witness: We do not make any separation as to any part of the system; we would have to analyze as well as the revenue, the maintenance and transportation, and it would be an enormous amount of detail involved to determine that here.

President White: Let me ask you this question.

The Witness: Yes sir.

President White: In obtaining your figure as to the net railway operating deficit, do you include allocated part of return as a part of the deficit? The Witness: No sir, we do not.

Mr. Oliver: Are you speaking of return on investment? The Witness: No sir, this deficit represents a difference in the revenue and the railway operating expenses, equipment, joint facility rent, etc., and taxes assignable to passenger service.

Mr. Bruce: Is that a system deficit or a deficit in the

operations in Alabama only?

[fol. 1964] The Witness: It is a system deficit.

Mr. Bruce: In other words, Alabama is no different than any other state you operate in? There is a deficit in the other states, too?

The Witness: This deficit is for the entire system with

no attempt being made to distribute it to the states.

Mr. Bruce: Thank you.

By Mr. Oliver:

Q. Take up your Page 2.

A. Page 2 shows for the same railroads in Alabama the revenue derived from the transportation of passengers for the years 1936 to 1941, inclusive, and the average of those years.

Q. That is gross revenue from passenger transportation,

is it not?

A. Yes sir.

Q. Now, what does Page No. 3 show?

A. Page No. 3 shows the per cent by which account No. 102, passenger revenue, would have to be raised in order to wipe out net railway operating deficit from passenger operations as shown on Page 1 of this exhibit, for each of the Class I railroads operating in the State of Alabama. This is likewise based on the system and not for the State of Alabama alone.

Mr. Bruce: Was that based on a ratio of operating ex-

pense against operating revenue?

The Witness: That is operating expenses, taxes, equip-[fol. 1965] ment and joint facilities rents net assignable to

the passenger service.

Q. Referring to the AGS for the year 1941, on Page 2, there is a passenger revenue shown of \$1,269,000-odd; on Page 3 for the year 1941, you have the per cent figure of 3 per cent. Does that mean that for the Alabama Great Southern to have broken even on its passenger business

that the figure of \$1,269,000 and odd dollars revenue would have had to have been increased by 3 per cent,—is that what you mean?

A. Yes sir, that is correct.

Q. And that is what those figures on that page mean?

A. Yes sir.

Commissioner Harrison: All of these figures are for the entire system and not for the operation in the State of Alabama?

The Witness: Yes sir.

President White: In dealing with passenger revenue, as to Page 2, you have included in that passenger revenue only revenue from a passenger hauled that was wholly intrastate in Alabama, is that correct?

The Witness: Page 2 is the system passenger revenue.

President White: Oh, yes, that is the system passenger revenue?

The Witness: Yes sir.

Commissioner Harrison: Have you prepared a similar exhibit with reference to passenger operating expenses as [fol. 1966] you have on Page 2, your passenger revenue?

The Witness: No sir, I have not.

Commissioner Harrison: Why didn't you attach that so that we could make a calculation if we saw fit to.

The Witness: Yes sir, but the calculation can be made

from the net railway operating deficit.

Commissioner Harrison: But you haven't any exhibit showing the operating expenses over your system so far as the passengers are concerned?

The Witness: No sir.

Mr. Oliver: That could be arrived at, Mr. Harrison, by adding, or, rather, deducting from the figures on Page 2 the figures on Page 1.

The Witness: That could be arrived at by adding to the figure on Page 2 the deficits shown on Page 1 in order to arrive at the expenses assignable to passenger service.

Commissioner Harrison: This does show that your revenue practically doubled in 1941, the AGS, for 1942 over 1941?

The Witness: Yes sir.

Commissioner Harrison: But you didn't come here in 1940 and ask for any increase in passenger fares, did you?

The Witness: No sir.

Mr. Bruce: While you are on that subject, I am going to ask you if these figures represent a total earning on your passenger trains, or is that only the passenger earnings itself?

[fol. 1967] The Witness: That does represent, with respect to passenger runs, that represents the entire passenger operations, passenger and allied services.

Mr. Bruce: Would that include express and mail and

cream and milk?

The Witness: Yes, and the figures on Page 2 represent transportation of passengers only.

Q. Now, will you explain Page 4, please?

A. Page 4 shows for the Class I railroads in Alabama, the total system mileage operated as compared with the mileage operated by those companies in Alabama for the years 1936-1941, and the average thereof.

Page-5

Commissioner Harrison: Now, let's see on Page 4, your total number of miles operated in Alabama of these Class I roads was less in 1941 than they were in 1940.

The Witness: Yes.

Commissioner Harrison: But their revenue practically doubled in the same period of time, didn't it?

The Witness: Yes sir.

Commissioner Harrison: All right.

• The Witness: Page No. 5 shows for Class I railroads operating in the State of Alabama, net railway operating deficit from passenger operations per mile of road operated as close of year, average year of six, 1936-1941; and on the [fol. 1968] righthand side of Page 5 it shows the total miles operated in Alabama multiplied by that deficit in order to determine a comparison of the deficit in Alabama with that for the total system mileage for each of these roads.

This comparison shows for the entire line a net railway operating deficit per passenger, per mile, of \$787, and for

the State of Alabama, \$850.

Q. That is per mile?

A. Yes sir, that is per mile. I think I stated that it was per mile.

Q. In arriving at your deficit in Alabama, you have used

system averages per mile, have you not?

A. Yes sir; what each shows with respect to all Class I railroads in the Southern region for the years 1921 to 1941, and the average year thereof, the rate of return of 3.07 per

cent, as compared with, for the average year, 1937 to 1941, inclusive, 2.11 per cent. It further shows that for the average year from 1921 to 1941, that the net income was \$32,226,000 as compared with, for the average year 1931-41 a net deficit of \$1,941,000.

Commissioner Harrison: Let me ask him something, please. How did you explain, or I wish you would explain for me, please, on Page 5, at the bottom, of page, you have the total under the per mile operating deficit for the entire line is \$787, and you have \$850 per mile net railway operating deficit apportioned to Alabama,—will you please ex[fol. 1969] plain that for us?

The Witness: With respect to the portion of Alabama, the mileage relationship for Alabama, the same mileage relationship does not exist for the State of Alabama as it does for the entire line.

Commissioner Harrison: How did you arrive at the figure of \$850 as the per mile deficit apportioned to Alabama?

The Witness: We divided the total miles in Alabama into the total accumulations based on the production for months for each railroad.

Commissioner Harrison: You just added all of those months up and divided it by the number of roads, is that correct?

The Witness: Yes sir.

Commissioner Harrison: And the same thing with regard to the date?

The Witness: Yes sir.

Commissioner Harrison: That has nothing to do with the revenue of each one.

The Witness: We try to bring out this comparison in the State of Alabama by assigning the deficits—

Commissioner Harrison: If all of these lines operated the same number of trains over your entire system on the date, then your total would have been identically the same?

The Witness: Yes sir.

[fol. 1970] Commissioner Harrison: So, it doesn't mean anything at all, does it?

The Witness: It is merely to bring out the deficits for the amount of runs:

Commissioner Harrison: You have taken the AGS as 315 miles to entire line and the next figure is 639 for the AB&C, and so on down the line, and you have added those

revenues together and those other figures together to getthe total and then divided it out, is that it?

The Witness: Yes sir.

Commissioner Harrison: And that doesn't mean anything as to whether the roads are operating in Alabama at a loss or a profit, does it?

The Witness: No sir.

Mr. Bruce: Your operating cost is not the same in each

one of these states that you operate in, is it?

The Witness: We have not made any effort to determine that; there are so many compilations involved that it would be almost an impossibility to determine the cost in the various states. There are none of the railroads that have set their accounts up so that that could be readily determined.

#### By Mr. Oliver:

Q. You have been dealing with the figures on Page 5. Page 6 shows revenue and expenses and net income not only for passenger operations but freight as well? [fol. 1971] A. Yes sir, that is the total freight and passenger.

Q. All right, the next page?

A. Page No. 7 shows for these same railroads the investment in railway property used in transportation service, including cash and materials and supplies as reported, annually to the Interstate Commerce Commission; the net railway operating income and the rate of return for the average year, 1921 to 1941.

This particular statement shows that during this period, the AB&C had a deficit of 1.28 per cent, and it also shows that the rate of return for the Alabama Great Southern

over that period of time was 4.37 per cent.

Commissioner Harrison: And on Page No. 6 of your Exhibit No. 3 it shows that for the year 1941 your earnings and net income were 4.24 per cent on your investment, does it not?

The Witness: Yes sir.

Commissioner Harrison: And in 1938, there was a deficit of 1.9 per cent.

The Witness: No sir, it was an income net 1:9, that is before net income. After the fixed charges were paid, then they had a deficit of \$9,734,450.

Commissioner Marrison: You had a deficit of \$9,734,450, and in 1941, you had a net of \$74,485,799?

The Witness: Yes sir, that is for all the railroads oper-

ating in the Southern region.

[fol. 1972] Commissioner Harrison: Then, you would say from those figures that the railroads need any additional revenue?

The Witness: Yes sir, they do.

Commissioner Harrison: To pay expenses?

The Witness: Yes sir.

Commissioner Harrison: And that is the basis of this application?

The Witness: Of course, we say that as to these times, they are abnormal, and we don't expect them to continue.

Mr. Bruce: Page 7, in your first column, are these figures shown there the investment in railway property used in transportation service? Are these the book values of these different railroads, or is this based on the Commission's valuation?

The Witness: No sir, that is book value.

Mr. Bruce: Do you know what the difference is between the book value and the Commission's valuation!

The Witness: I know that there is some difference, but I can't give you the details about it. I know that these figures have been revised to conform to Tariff 211-N which is a new tariff effective in January, 1936.

Mr. Bruce: These figures shown here are not permitted to be used as figures for rate making purposes?

The Witness: I am not familiar with that.

Mr. Bruce: You are not familiar with that?

[fol. 1973] The Witness: No.

Mr. Bruce: I will ask you the question if the Commission's figures are the ones that are used in rate making?

The Witness: I don't know.

Mr. Bruce: Or don't you know?
The Witness: No sir, I do not know.

President White: Now, on Page 6 it appears that your authority for those figures is not the records of the Interstate Commerce Commission but that those are some of the figures from the Bureau of Railway Economics of the Association of American Railroads, is that correct?

The Witness: With respect to the investment, the Interstate Commerce Commission, in 211-N asked the carriers to make no change in the investment figures reported in their annual report for 1936 and 1941, and the Association of American Railroads wrote to all carriers all over the United States and asked them if they would rather state their investment account to conform to the Table 211-N.

President White: These figures in Column 7 are the book

values of these respective companies?

The Witness: Yes sir, they are the book values, but they are shown in the annual reports as I have stated, to the Interstate Commerce Commission from 1936 to 1941, and they have been adjusted back to 1921 to correspond with the figures that are currently reported.

[fol. 1974] Mr. Bruce: Are you familiar with the valua-

tion cases?

The Witness: No.

Mr. Bruce: All right, that's all.

President White: Referring to Page 7, do you now if any other line in the territory of the AB&C is operated with a similar return on its investment?

The Witness: No sir, I do not, sir; they worked up those figures, but I did not investigate to see what details were involved and did not look to see if there had been any income on it.

President White: All right.

The Witness: Now, with respect to Page 8 of my Exhibit No. 3, we show here the system miles, the rate of return and the weighting, and we show here again information somewhat similar to that shown on Page 5, whereas after a weighting, the rate of return shows 2.94 as compared with 3.08 for the State of Alabama,—the figure 2.94 representing the entire line.

Mr. Oliver: Are these figures combined from what you have shown on those roads on Page 7, this average?

The Witness: Yes. With respect to Page 9, here again we show the system miléage, and the full cost ratio, that is the ratio expenses, equipment and joint facilities rent and taxes and 5% per cent return on the investment and that full cost ratio has been weighted with respect to the entire [fol. 1975] line and with respect to the mileage operated in Alabama.

The full cost ratio for the entire line, weighted is 114, and in the State of Alabama, it is 113 per cent.

Mr. Bruce: That is based on system average also?

The Witness: Yes.

Mr. Bruce: The division of the mileage and complete freight revenue and division and the setup per mile, and then allocating it to the mileage applicable in Alabama?

The Witness: Yes. ..

# By Mr. Oliver:

Q. When you speak of full cost ratio, do you refer to 53/4 per cent return on the investment?

A. Yes sir, on the property used in transportation service,

plus cash and materials and supplies.

Q. Am I correct in my understanding that with reference to the Southern Railway Company, for instance, where you. show ratio for the entire line of 111 per cent, that that means that the revenue of the Southern Railway Company. would have had to have been increased by 11 per cent to have enabled them to earn the return of 53/4 per cent on their investment for this period?

A. Yes sir.

Q. Now, take up the next page.

A. Page No. 10 shows the elements of value of property used in common carrier service as of January 1, 1940, as [fol. 1976] determined by the Interstate Commerce Commission. Basis A shows the production cost; and Basis B shows the reproduction estimate. In the last two columns, the capital outlay represents Basis A or the production cost plus lands and working capital. Basis B represents the reproduction estimate plus lands and working capital.

At the bottom of this page is shown the ratio of 113 per cent reproduction estimate as compared with production cost and with respect to the capital outlay that ratio on Basis B 112 per cent is shown as compared with 100 per

cent on Basis A

President White: Now, in your case, under the column headed "Basis A", has there been any deduction for depreciation?

The Witness: No sir

President White: And that also applies to Basis B?

The Witness: Yes sir

President White: And that also applies to the two columns as to capital outlay, cost of production for depreciation?

The Witness: No.

Mr. Bruce: Does that include maintenance, repairs and upkeep?

The Witness: Yes, that would include them, yes sir.

Mr. Bruce: The railroads don't base that upon the depreciation, do they?

The Witness: No.

[fol. 1977] Mr. Bruce: In other words, take a passenger car, if it cost \$45,000, it remains at \$45,000 and nothing is set aside to cover that passenger car at the end of its life?

The Witness: They do have depreciation with respect to

passenger equipment.

Mr. Bruce: What do you do with this depreciation?

The Witness: We charge that off to expenses.

Mr. Bruce: That becomes a deficit?

The Witness: No sir.

Mr. Bruce: Is the permissive power granted to the railroad in the Transportation Act of 1940 to set aside a certain fund for depreciation, or do you know?

The Witness: I think so.

Mr. Bruce: And you start building up that depreciation from this year, is that right?

The Witness: Yes.

Mr. Bruce: Thank you.

By Mr. Oliver:

Q. Your next exhibit, Mr. Beight, which will be No. 4 for identification.

(Exhibit No. 4, Witness Beight, marked for identification.)

Q. Will you please proceed?

A. My next exhibit, No. 4, shows at the top for the Southern Railway Company for the eight months ended August 31, 1941, and '42, respectively, the total railway [fol. 1978] operating revenues, expenses, tax accruals, etc., for both the freight and the passenger service.

This exhibit shows an operating ratio, excluding taxes and rents, for the eight months of 1942 ended on August 31st of 58.45 per cent as compared with 62.73 per cent in

1941.

It likewise shows after including taxes and rents, that the operating ratio for that same period in 1940 to a 77.79 per cent as compared with 76.54 per cent in 1941.

President White: Now, what taxes have you included in determining the operating ratio where you included taxes and rents? What taxes have you included?

The Witness: With respect to 1942, we made a determined effort to comply as far as possible with the new law.

President White: We are not advised about all the ins

and outs of the new law. Will you please tell us!

The Witness: I do not know; the tax department worked

those figures up.

Mr. Bruce: The railroads are not permitted to use their tax figures or interest in arriving at an operating revenue, is that right! This Transportation Act of 1949 gave you the right to include your taxes as an expense against your operating ratio, is that right!

The Witness: I didn't get that question.

Mr. Bruce: In other words, prior to the passage of the 1940 Transportation Act, in computing your ratio of earn-[fol. 1979] ings against expenses, you could not include taxes, the taxes are set aside and they came out of your net operating income?

The Witness: Yes.

Mr. Bruce: And in 1940, the Transportation Act of 1940 rave you the benefit of attaching onto your expense your taxes, is that right!

The Witness: Yes sir.

President White: All taxes!

Mr. Bruce: All taxes.

Mr. Bliss: What section of the Act is that in, do you know where that section of the Act is found or where that provision in the Act is found?

Mr. Bruce: Well, I don't remember exactly where it was set out. I was in Congress when that thing passed,—well. I wouldn't say exactly in Congress, but I was before the Committee. Now, the main items that entered into this, your ratio there for the first eight mouths of '42 was 56.45 for while a like period in '41 is 62.73—is the fact that in that year the taxes were not included in the ratio—and in 1942 you are permitted to do that, isn't that the explanation of it!

The Winness Yes.

Mr. Bruce: Now, the taxes might include, for instance, your employees, your contributions toward the Retirement Fund that you have paid at the present time under and by [for 1981] wirthe of the Railway Retirement Act.

A. The sir

Mr. Bruce: And it might include that part that you deduct

from your payroil from the employees' salary that you pay the Federal Government for them, is that tant'

The Witness: Yes.

Mr. Ofiver: I didn't get your question there. I didn't understand you. Did you say there were no taxes included in it or did you ask if any taxes were included in the 1941 figures here where it is an operating ratio!

Mr. Bruce: No taxes in 1941 came in. In other words, they were deducted from your net revenue but since 1941.

they have become a part of your expenses. .

President White: The question of whether you are correct, the figure here, operating ratio, including taxes and rents is shown to be 76.54 for the first eight months of 1941 and for the like period in '42 it is just 1.25 per cent higher.

Mr. Bruce: That makes the difference between the tedest. In other words, if you take the taxes out, that is where the difference has been in the past year, the increase in taxes and rents, this year right here, you have got it in Sheet M-100, in 1941, the railroads for the Southern District paid \$15,212,000 plus and in 1942 they paid \$138,590,000, and that is an account of excise taxes and so forth which is divided equally between the employee and the employees.

[fat. 1961] isn't that wort;

The Witness: Yes sir.

Mr. Bence: They pay 50 per jent each and that increased, your tax proportion this year: 41 was the first time these taxes were permitted to be charged as an expense against

operating net, is that right !

The Witness: Well, that is my inderstanding of it. Of course, I am not really as familiar as I should be with I that comes under their tax department, they have given ne a figure that represents with respect to the eight months in 1941 as nearly an accurate a figure as they can in respect to the taxes, as I inderstand it.

Mr. Bence: Sheet M-100 shows that -ct shows i great

nervase there in 1942 against '41 on takes.

The Winness Yas

Mr. Oliver, Mr. Chairman, may I interrupt the just a

President White: Yes sir:

Mr. Oliver: Mr. Simpson is very anxious to get take to Borningham, and if there are no further prestions for usin, a I would like to-have him excused as this time.

President White: Is there any objection to Mr. Simpson being excused at this time?

(No response.)

President White: You are excused, Mr. Simpson. [fol. 1982] If you will look at Exhibit No. 4 itself, in the figures at the top of the sheet, under the heading "Total railway tax accruals" for the first eight months of 1941, it was \$10,085,242, and for the like period in 1942, it was \$22,489,579.

Mr. Bruce: And in 1942, you have these various excise taxes and also the Railway Retirement Act and Unemployment Act, which is ratified with the Act itself, and the Commission with an executive order, an administrative order, permitted the railroads to include that in their expenses, that is, the taxes in their expenses starting with this year.

Commissioner Harrison: How much of this \$22,000,000 item that is set up for accrual of taxes have you estimated

as the income tax to be paid on your net income?

The Witness: We don't show that separately, sir; we do show a separation of net income as it exists, with the information as between the railway tax accruals and federal stock tax on the one hand and with respect to federal and state income and capital stock tax on the other, and I will offer that data in a moment.

I want to say that the lower portion of my Exhibit No. 4 shows selected passenger revenue and traffic statistics for the seven months' period ended July 31, 1941, and for a

like period in 1942.

We selected the seven months for this lower portioninasmuch as at the particular time the statistics for the [fol. 1983] eight months were not available as to the Southern Railway Company and the AGS.

These exhibits are offered for the Southern Railway Company, the AGS Railroad, the Atlantic Coast Line, the Seaboard Air Line and the Central of Georgia Railway . Company.

By Mr. Oliver:

Q. With respect to the Atlantic Coast Line and the Central of Georgia and the Seaboard Air Line Railway, where did you get the figures you have in the statement?

A. They were furnished to us by those respective rail-

Q. By the accounting departments of those railroads?

A. Yes sir.

President White: On Sheet 1 of Exhibit No. 4, your average revenue per passenger mile in cents, first in coach, other than commutation, you have arrived at a figure for 1941 of 1.411, and for the same periods in '42, you have arrived at a figure of 1.418. Have you included in that figure the passenger miles of transporting men in uniform of the Army and Navy and Marine Corps, and others who are entitled to travel on lower fares?

The Witness: Yes sir, we have.

President White: As well as troops transported in troop trains!

The Witness: Yes sir, we have included all passengers. President White: And, of course, the average revenue [fol. 1984] per passenger mile for civilian travel would, consequently, be substantially higher than the figure shown here, is that correct?

The Witness: Yes sir.

Commissioner Harrison: In glancing over these figures. I notice that the Southern Railway, that their revenue has increased perhaps 50 per cent in 1942 over 1941, is that about correct!

The Witness: Yes sir.

Mr. Oliver: It is almost 100 per cent.

The Witness: That is the gross revenue:

Commissioner Harrison: I am talking about the gross.

The Witness: Yes sir.

Commissioner Harrison: And the AGS revenue has increased practically 100 per cent!

The Witness: Yes sir.

Commissioner Harrison: And the Atlantic Coast Line has decreased some 50 per cent?

The Witness: That is just the reverse,—that is prepared the other way.

Commissioner Harrison: It has increased 50 per cent!

The Witness: Yes sir.

Commissioner Harrison: And the same applies to the Seaboard Air Line Railway!

The Witness: Yes sir.

[fol. 1985] Commissioner Harrison: And the same applies as to the Central of Georgia Railroad?

The Witness: Yes,-

Commissioner Harrison: With a lower percentage?

The Witness: Yes sir.

Commissioner Harrison: Is it a fact or not that the AGS has 83 per cent of its mileage as shown on your Exhibit No. 4—on Page 5—of its mileage in Alabama?

The Witness: Yes sir.

Commissioner Harrison: And all of these other roads only have a very small per cent of their miles of railroad in Alabama?

The Witness: Except as to the Southern Railway Com-

pany.

Commissioner Harrison: The Southern Railway Company has 6,640 miles on its system and only 1023 miles in Alabama?

The Witness: Yes sir.

Commissioner Harrison: According to this exhibit?

The Witness: Yes sir.

Commissioner Harrison: Then, wouldn't you say this exhibit, on its face, shows that the passenger business in Alabama was very much more profitable than it was on all of the lines that run outside of Alabama of the Southern Railway System?

Mr. Oliver: Those are gross figures, you must bear in

mind.

[fol. 1986] Commissioner Harrison: I am talking about gross passenger fares.

Mr. Oliver: You were speaking of profit, you said profit.

Commissioner Harrison: I meant the gross passenger

The Witness: As I say, we don't show anything in here with respect to the total revenue earned in Alabama except by allocation.

Commissioner Harrison: But all of your exhibits are estimates on your system?

The Witness: Yes.

Commissioner Harrison: But it so happens that the AGS operates almost exclusively in Alabama?

The Witness: Yes.

Commissioner Harrison: And therefore, their earnings must have all been earned in Alabama?

The Witness: Yes, the substantial part.

Commissioner Harrison: Well, 83 per cent of their mileage is in the State of Alabama.

The Witness: Yes.

Commissioner Harrison: And their passenger revenue

increased 100 per cent in that year?

The Witness: Yes. However, with respect to the AGS, that is a bridge carrier, and most of those passengers would possibly be delivered to them by other carriers or [fol. 1987] delivered to them by other carriers for a longer haul by other passenger carriers, I would say either by the C&O and TP or the Southern Railway or the NO&NE.

Commissioner Harrison: Where does the AGS start?
The Witness: It starts at Birmingham and goes to Meridian, and some of the passengers were properly delivered to it by the NO&NE.

Commissioner Harrison: It could be?

The Witness: Yes sir.

Commissioner Harrison: But the fact is that the Central of Georgia Railroad's revenue is only increased three million dollars and the Central of Georgia has 1879 miles of railroad on its system and only 508 in Alabama?

The Witness: Yes.

Commissioner Harrison: If they got the same per cent in Alabama on busines as the AGS did, their revenue would be jumped up 100 per cent, wouldn't it?

The Witness: As I have said, I believe that the business of the AGS, that is the majority of it is delivered to that railroad from New Orleans or Crucinnati or from some point on the Southern Railway.

Commissioner Harrison: Now, you are just merely

guessing at that, aren't you?

The Witness: As I have said, the AGS is a bridge carrier and it doesn't have an enormous amount of business [fol. 1988] locally, but it is mostly by passengers being transported to New Orleans or Cincinnati or from those points; it is mostly a bridge carrier, as I have stated.

Commisioner Harrison: Well; they did so much business that they asked us to take off the local trains, is that right?

The Witness: I don't know about that.

Commissioner Harrison: They did that and here is the

record where they did it. It is Docket No. 8212.

Mr. Bruce: Now, take the Alabama Great Southern Railroad Company sheet.

The Witness: Yes.

Mr. Bruce: And your Account No. 102, passenger revenue, I notice in 1941 that it showed passenger revenue, coaches, other than commutation, \$294,767, and in 1942, for a like period, it shows \$595,614,—does that line have any camps located on its mileage?

The Witness: I believe it does, but I am really not fami-

liar with that, sir.

Mr. Bruce: Does anybody know about that?

Mr. Oliver: Mr. Barry, are there any camps on the AGS Railroad line?

Mr. Barry: There are no large camps on the AGS Rail-

road.

President White: Off the record.

(Discussion of the record.)

Mr. Oliver: At this point, I would like to have Mr. Barry [fol. 1989] answer Mr. Bruce's question with regard to whether or not there are any camps on the line of the AGS Railroad whose troop movement might be reflected.

Mr. Barry: There are no military camps on the AGS Railroad and the troop movements that are handled by the AGS Railroad are delivered to them at Chattanooga, Birmingham or Meridian for through movement beyond, or originating beyond.

Mr. Bruce: It will be connecting line movement then?

Mr. Barry: Yes sir.

Mr. Oliver: Do you think that the Camp Shelby movement is responsible for inflating somewhat the AGS revenue?

. Mr. Barry: That is a very sizeable amount, but there

are others that are to be considered, too.

President White: How does Camp Shelby compare with

the camp at Anniston on the Southern?

Mr. Barry: It is much larger, maybe double; in addition, there is a great volume of military movement that goes to New Orleans and west going down the AGS.

Commissioner Harrison: Isn't Anniston the concentra-

tion point for all of Alabama?

Mr. Barry: Anniston is the concentration point for troops moving in and out of Ft. McClellan.

Commissioner Harrison: All of the draftees in Alabama, aren't they required to go into Anniston for physical examination?

[fol. 1990] Mr. Barry; Oh, no, not all of them.

Commissioner Lee: I think most of them from this sec-

tion go to Ft. Benning, Georgia.

Commissioner Harrison: Don't all of them from Western Alabama go to Ft. McClelland at Anniston on the Southern Railway,—that is, all of the draftees?

Mr. Oliver: Do you know, Mr. Barry?

Mr. Barry: I can't answer that as to the dividing line; I know that they are divided as to the different fields when they are constructed.

By Mr. Oliver:

Q. Now, Mr. Beight, will you take up your next exhibit? President White: This exhibit will be marked No. 5.

(Exhibit No. 5, Witness Beight, marked for identification.)

The Witness: My Exhibit No. 5 has been prepared for the Southern Railway Company, The Alabama Great Southern Railroad Company; the Atlantic Goast Line Railroad Company; the Seaboard Air Line Railway and

the Louisville & Nashville Railroad Company.

This exhibit shows the total operating revenue, total operating expenses and so forth, separated as between freight and passenger service for the eight months ended August 31, 1942. Such separation is both as to revenue and expenses, etc., having been made in accordance with the formula of the Interstate Commerce Commission. [fol. 1991] This exhibit, with respect to the Southern Railway, shows on Line 10 a net railway operating income from passenger service of \$4,648,530; it likewise shows the net railway operating deficit from passenger and allied service for the years 1936 to 1941, an amount ag-regating \$23,907,770, or a net operating deficit from passenger service for those 6% years of \$19,259,240.

At the lower portion of the statement will be shown the investment in railway property used in transportation service as reported to the Interstate Commerce Commission; cash, material and supplies, and total as of December 31, 1941, and there is shown the return for one year at 53 per cent, and also the return for the eight months' period

ended August 31, 1942.

This portion of the statement shows that after providing a return on investment, and the passenger portion of the total investment, that there is a net deficit from passenger operations as shown on Line 25 of \$184,054.

Q. And as shown on Line 17, in arriving at the return,

you have used 5% per cent as the basis of the return?

A. Yes sir.

Mr. Bruce: Under Line 22?

The Witness: Yes sir.

Mr. Bruce: The heading "Allowance for return on investment, 81-per cent",—what is tha 81 per cent? [fol. 1992] The Witness: That 81 per cent represents

what is left of the revenue assigned to passenger service as shown on Line 1 after providing for return on investment.

Mr. Bruce: That is Line 1 less what?

The Witnesse Line 1 less 19, or 19 per cent of the passenger revenue to provide for return; in other words, the return, when considered from an angle of both freight and passenger represents 19 per cent of the total freight and passenger, so we have deducted 19 per cent from the gross revenue assignable for passenger service.

Mr. Bruce: That 19 per cent would be based upon the

book value or upon the Commission's valuation?

The Witness: Yes sir; the book value. . .

Mr. Oliver: The figures for the other companies shown on this exhibit are arrived at in the same manner that you describe as to the Southern Railway?

The Witness: Yes sir. I might call your attention to the exhibit prepared by the accounting department of the Seaboard Air Line Railway,—in those two years there is shown net income from passenger operations of approximately two million dollars. I am advised by the Seaboard Air Line that they have not as yet made an attempt to include anything for federal and state income taxes and federal capital stock tax because they said it would be rather difficult now and they couldn't make any fair estimate.

[fol. 1993] Mr. Bruce: In other words, these taxes are not due yet.

The Witness: The Seaboard Air Line Railway has not made any accrual as to those specific tax figures, according to their information given to me.

Mr. Bruce: Don't you set aside a monthly allotment from your earnings for tax payments?

The Witness: Yes sir, and we have shown them for the

Southern Railway and for the AGS.

. Mr. Bruce: And when these taxes come due, the deduction has been made as to your net?

The Witness: Yes, and the Southern and all other lines

except the Seaboard---

Mr. Bruce: On a monthly basis?

The Witness: Yes.

Mr. Bruce: Have you reported that to the Interstate Commerce Commission monthly?

The Witness: Yes sir.

Mr. Bruce: Therefore, your item of taxes there coming due in November or December, so far as the state is concerned, except income, and the income is estimated on the amount, is already set aside to cover the taxes when due?

The Witness: Yes, and income, too, with respect to the

Southern Railway Company has been adjusted.

Mr. Bruce: On last year's payment?

The Witness: Yes.

[fol. 1994] Mr. Bruce: I see.

(Exhibit No. 6, Witness Beight, marked for identification.)

# By Mr. Oliver:

Q. Now, Mr. Beight, will you take up your next exhibit, which has been marked for identification as Exhibit No. 6?

A. My Exhibit No. 6 has been prepared for the Southern Railway Company, The Alabama Great Southern Railroad Company, the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railway.

This exhibit shows the passenger revenue for the years 1937 to 1941 and for the first seven months of 1942 as compared with the corresponding period in 1941. It shows passenger revenue separated as between coach traffic and pullman traffic, and the same separation with respect to passengers carried one mile, and the revenue per passenger per mile. It also shows at the lower portion the intrastate revenue as reported by the Southern Railway Company to the various states through which it operates.

It shows with respect to Alabama, comparing 1941 with

1940, an increase in the intrastate business of 20 per cent, and—

Q. Roughly stated, it is 19.91, isn't it?

A. 19.91, yes sir, and comparing the seven months in 1942 with the corresponding period in 1941, an increase in intrastate business of 70.18 per cent.

[fol. 1995] Mr. Bruce: That is based on actual figures or

system average?

The Witness: That is based on intrastate revenue as reported to the State of Alabama on the Southern Railway Company's annual report to the State of Alabama, and that is actual.

Mr. Bruce: On the top of your first page, the top section, at the bottom, before the last line, seven months in 1941, you show above that increase seven months 1942?

The Witness: Yes sir.

Mr. Bruce: And across there you show \$4,900,042 and under that you show 118.83 per cent,—does that mean. 118.83 per cent increase for these seven months in 1942 over 1941?

The Witness: Yes sir, in the gross revenue.

Mr. Bruce: And you have a corresponding increase in the pullman, total revenue from Pullman cars, and you have an increase for these seven months of 114.50 per cent, or a total for both coach and pullman of \$8,722,899 or 116.45 per cent?

The Witness: Yes sir, that is for both coach and pull-

man.

Mr. Oliver: Now, Mr. Beight, the statements for the other roads which follow are made up in exactly the same way, are they not?

The Witness: Yes sir.

Mr. Oliver: You may cross-examine.

The Witness: That is one point that I would like to Ifol. 1996] bring out with respect to Statement M-100. You asked about the passenger operating ratio. I- would be rather difficult for the entire railroad to develop a comparison of operating freight ratio and passenger ratio because the expenses of each carrier would have to be distributed as between freight and passenger in accordance with the Commission's formula. However, for this particular case, the lines in the Southern region, the Southern Railway and the AGS and the Atlantic Coast Line and the Seaboard Air Line and the L&N, I have been able to work

out from what figures I have here the total ratio and the freight operating ratio and the passenger operating ratio. That, of course, is the gross revenue divided into the railway operating expenses solely.

Mr. Oliver: That is before taxes or rents?

The Witness: Yes sir, that is before taxes or rents. As an illustration, on the Southern Railway Company, the total operating ratio for the eight months in 1942 is in round figures 58 per cent; the freight operating ratio is 57 per cent; the passenger operating ratio is 66 per cent. We will make it 65 per cent. On the AGS Railroad Company, the total operating ratio is 52 per cent; the freight operating ratio is 50 per cent; the passenger operating ratio is 64 per cent.

On the Atlantic Coast Line, fotal operating ratio—
President White: These are all figures for the first

eight months of 1942?

[fol. 1997] The Witness: Yes sir; total operating ratio 58 per cent; freight operating ratio 54 per cent, and passenger operating ratio 71 per cent.

For the Seaboard Air Line Railway, total operating ratio 61 per cent, freight, 60 per cent, passenger, 63 per

cent.

For the L&N Railroad Company, total operating ratio 61 per cent, freight, 57 per cent, and passenger, 79 per cent.

Now, as I say, we have these figures readily available in view of the fact each of these carriers has made an actual separation of their revenue and expenses in accordance with the formula prescribed by the Commission, and, therefore, we have been able to determine just what the ratios are for the eight months.

President White: You haven't figured out the ratios for

the corresponding period in 1941?

The Witness: No sir, we would have to break down the

revenue and expenses.

Commissioner Harrison: How did they arrive at the revenue of passenger fares in Alabama? Did they not just take a total revenue for the system and divide that by the number of miles?

The Witness: No sir, I believe that is actual, as audited by our passenger department in Atlanta. In other words, that is what is shown in the back part of the annual report to Alabama—one column is headed intrastate and the other column is headed interstate, and the other one is [fol. 1998] the total, and this (indicating) is the intrastate portion only, but I think those are the actual intrastate figures.

Commissioner Harrison: If you will look at it closely—I am not saying they are not correct about that, but just at a glance I would say the mileage in Alabama was 15 per cent of the system mileage and the revenue that you show for Alabama is 15 per cent of the system passenger revenue. It may be just a coincidence.

The Witness: It would be, I believe.

Commissioner Harrison: They seem to be the same.

President White: That probably wouldn't have much weight in this case. Where your system operates in Illinois, it shows that in 1941 you had less intrastate passenger revenue than you had in 1940.

The Witness: Yes sir.

President White: That is the only state where I see that that occurred.

The Witness: Yes sir, that is right, sir.

President White: That is what I was referring to.

Mr. Oliver: I would like to offer at this point Exhibits 5 to 6 inclusive, which have been identified and discussed by the witness.

President White Exhibits 3 to 6, inclusive, will be received in evidence.

(Exhibits 3 to 6, inclusive, Witness Beight, received in evidence.)

[fol. 1999] Mr. Bruce: That means that the passenger dollar, for instance, in 1941, in these ratios, the revenue dollar that came from freight or passenger, that 66.8 cents of that dollar was used in operating expense, is that right!

The Witness: That is right. What exhibit is that on? Mr. Bruce: It is a report to the Commission for our information in 1942 it shows that the ratio of expense to revenue in percentage was 60 per cent,—therefore, there is a decrease of 6.8 per cent, or 6.8 cents per revenue dollar, less cost of operating expense there for you to operate your railroad in the Southern region, is that right!

The Witness: That is before taxes and equipment and joint facility rents. I might call your attention to the exhibit submitted for the AGS Railroad Company, in com-

paring Exhibit 5 with Exhibit 4, both with respect to the AGS.

Mr. Bruce: For the Southern Railway, the freight revenue per cent is increased there, that is, on the whole, it is 41.6 per cent, that is for the Southern Railway, that is 1942 over '41 for the first nine months; the passenger increase was 109.3 per cent. Therefore, there was a much greater increase there in passenger earnings than in freight earnings in per cent, than in freight earnings.

The Witness: Yes.

Mr. Bruce: And if your ratio has been reduced that much in expenses against revenue, the reduction must have been [fol. 2000] greater in passenger than in freight, wasn't that right!

The Witness: Yes sir, and I believe that is brought out

there.

Mr. Bruce: That is, I mean in the operating cost.

The Witness: Yes sir, I believe that would be borne out by reference to Page I of the exhibit consisting of ten pages wherein it is shown that for the year 1941 with respect to these Class I carriers in Alabama, the net railway operating deficit is substantially less than it had been in prior years but they are still operating at a deficit.

Mr. Bruce: The entire system of each one of these rail-

roads!:

The Witness: Yes.

Mr. Bruce: And that includes your operation in regard to parlor cars and observation cars and your buffet cars and the diners and so forth and so on?

The Witness: Yes.

Mr. Bruce: That is all included in that so-called deficit

The Witness: Yes.

Mr. Bruce: And these cars bring in very little revenue, such as parlor cars, club cars, buffet cars, observation cars and so forth!

The Witness: Yes sir, and dining cars. As to that operating ratio, there is an illustration to show the increase in equipment rents or net operating rents; my Exhibit No. 5. [fol, 2001] shows for the Alabama Great Southern Railroad net rents payable for the eight months ended August 31, 1942; of approximately \$459,000 as compared with \$9,565 for the corresponding period in 1941. When this is added to the operating expenses, of course, it would be an enganous influence on the operating ratio.

Mr. Bruce: Is the expenses incurred in the operation of your various passenger agencies in the cities throughout the nation included in that operating expense against passenger?

The Witness: Yes sir.

Mr. Bruce: Well, that is all I have, thank you.

President White: Any cross examination of this witness?

Mr. Bliss: Oh, yes sir.

President White: All right, let's go.

Cross-examination.

# By Mr. Bliss:

Q. You were asked if you could furnish the operating ratios for passenger and freight for the corresponding eight months of the year 1941, and you replied that it would be rather difficult to get those figures. Couldn't you submit the operating ratios for passenger and freight for the entire year 1941?

A. We could do that; they are available in the annual reports to the Interstate Commerce Commission; they do

show the operating ratios.

[fol. 2002] Q. Perhaps that would answer the question if you could furnish those.

A. We could furnish those all right; as a matter of fact, they are all available in the detailed general statement of the operating expenses.

Q. Those past operating ratios have always been over

100, haven't they?

A. Yes sir.

President White: Do you mean in the total or the passenger?

Mr. Bliss: On the passenger?

President White: Yes. The Witness: Yes sir.

Q. Now, you have operating ratios of 64 per cent for some carriers and 70 per cent for others? How long has it been since there were operating ratios that low on passenger traffic!

A. I believe this is the first year but, as I say, the passenger traffic is still not earning any participation and return on the investment.

President White: Has it ever done so in its history? The Witness: No sir, not that I know of.

Q. Now, Mr. Beight, let's look at your Exhibit No. 5.

A. Yes sir.

Q. Now, Line 8, does that include estimates for excess profits taxes?

[fol. 2003] A. That includes an estimate for all taxes up until August 31; that is Line 8 plus Line 3 represent total accrual for all taxes to August 31.

Q. Yes, but Line 8 includes income and excess profits taxes, doesn't it?

A. That is right.

Q. How have you apportioned those taxes to the freight and passenger services?

A. In accordance with the formula prescribed by the Interstate Commerce Commission.

Q. Just how does that work?

A. That works on the basis of the net railway operating income relationship shown on Line 6.

Mr. Oliver: In other words, you have charged 83 per cent of the income taxes to freight and 17 per cent to passenger?

The Witness: That is right.

.Q. Your freight business, however, is more profitable than your passenger business, isn't'it?

A. That is correct.

Q. Do you contend that you were incurring any excess profits taxes because of your passenger business? Would you?

A. I wouldn't be in position to state that.

Q. You have stated that you were incurring a deficit on

the passenger business?

A. Yes sir, we have done this under the formula pre-[fol. 2004] scribed by the Commission; it has operated at a deficit.

Q. Yet, you have charged the passenger traffic with 17

per cent of the excess profits taxes?

A. Yes sir, and we have done the same thing in prior years, or we would have done the same thing in prior years if the same situation had existed. This is the first year we have shown a net operating —net railway operating income up to this point.

Q. You did not charge them any taxes then?

A. That is right.

Q. And you now charge them the same taxes as the freight in proportion to their relationships to the net railway operating income?

A. In that proportion.

Q. And some of those taxes are excess profits taxes?

A. I assume that they are.

Q. If you changed your allocation of taxes by as much as

\$200,000, what would happen to Line 25!

A. If we changed that, we would get away from the formula prescribed by the Commission, and we would have just as much right to change the operating expense setup, and we don't have any right to do that.

Q. What would be the effect if you took \$200,000 of taxes from the passenger and charged it over into the freight.

what would that do to Line 25!

[fol. 2005] A. I haven't worked it out yet.

Q. Well, that is just very simple.

A. But we are compelled to follow the Commission's formula for distributing taxes and, therefore, in doing that, it naturally works out to a deficit.

Q: But if you were to change your allocation of taxes by as much as \$200,000, you would wipe out your deficit. wouldn't you!

A. And we would not follow the formula prescribed by

the Commission.

President White: I think that you are dealing in argument now.

The Witness: We would have to charge the figures, as a matter of fact.

Q. Going back to your Exhibit No. 3, Sheet 1, does that include the deficits in all passenger service!

A. That is right.

Q. Including express, mail, milk and cream?

A. Yes sir, or everything else that might be assigned to passengers.

Q. And on Page 2, however, you have only the passenger revenue?

A. That is right.

Q. Without the allied services!

A. Yes sir, that is right.

[fol. 2006] Q. Now, then, if you added the figures on Page

1 and on Page 2 together, would you arrive at a figure hav-

ing any meaning!

A. No sir, you would have to add them to the total passenger revenue; you would have to add them to the total passenger and allied revenues.

Q. Now, on Page 3, what do you show under the total

headed 1941 for the Gulf, Mobile & Ohio?

A. We show 190 per cent.

Q. That is the larges figure in that column isn't it?

A. That is right.

- Q. Did you hear Mr. Barry's testimony to the effect that the Gulf, Mobile & Ohio was now enjoying the higher fares and have been using the 2.2 fare all along?
  - A. I believe I did.

Q. Will you look at Page 6?

A. I know that the Gulf, Mobile & Ohio has recently re-

organized too; that might have some effect on it.

Q. Look at Page 6 of that exhibit, on your Exhibit No. 3, the column headed "Investment", "Investment in railway property used in transportation service",—has there been any depreciation?

· A. There has not.

Q. You haven't then deducted from your book value there sums equivalent to the depreciation that you have [fol. 2007] charged to operating expenses!

. A. No.

Q. Does the column headed "Taxes" include income taxes?

A. It includes all taxes.

Q. Please look at Exhibit No. 4, at Sweet 1,—will you look at the lines denoted revenue per coach mile for the Southern Railway!

A. I see that.

- Q. About what per cent has that increased in 1942 over 1941?
  - A. I would say about 45 per cent.

Mr. Oliver: That is purely a mathematical calculation.

The Witness: Well, about 45 per cent.

Q. Have all of those figures generally shown increases!

A. I believe they have.

Q. Do you have any figures that indicate your cost per passenger train mile or passenger car mile?

A. No, inasmuch as all of that would be reflected in the net operating results from passenger service, we have not made any effort to reduce it to any unit cost.

Q. The net result from passenger service as to 1942 over

1941?

A. They are not losing quite as much as they had been during the period from 1921 to 1941, but they are still losing money.

Q. Are you losing money or are you just failing to make

the return on bonds and taxes?

[fol, 2008] A. We are failing to the extent that the passenger service is still unable to give any assistance to the freight,—in other words, the freight is still carrying it all.

Q. With no assistance from the passenger?

A. The freight is carrying it all.

Q. Will.you look at Exhibit No. 5, the sheet for the Sea board. Air Line Railway?

A. As I said there, the Seaboard Air Line Railway has not made any provision for its taxes, its federal and state income taxes or its federal capital stock tax.

Q. But isn't the Seaboard Air Line Railway doing just about as well on its passenger traffic as it is on its freight!

A. I haven't gone into those points.

Q. You gave us the operating ratios?

A. Yes sir, but I didn't think much of it.

Q. Is the Seaboard Air Line Railway going to have to pay much income tax?

A. I don't know, sir.

Q. You know that they have been in receivership and had losses over the past years?

A. I never made any particular study as to the Seaboard Air Line Railway.

. Q. Are you sure that they will have to pay any income taxes this year?

A. I wouldn't be able to answer that question for you. [fol. 2009] Q. Have you computed the return, say the return—or after federal taxes based on the valuation that you have used for any of those roads, on Exhibit 5!

A. No.

Q. Could you figure out what per cent the forty-four malion in Line 6 on the first page, what per cent that is of the valuation figure that you have used on Line 16?

A. Of course, that would not really mean a whole lot.

You wouldn't have the greater portion of the taxes included in that figure shown on Line 6.

President White: We will take a five minute recess.

(Short recess taken.)

President White All right. Proceed.

Q. Looking again at Exhibit No. 5, can you explain why you picked 5% per cent?

President White: What is the question?

- Q. Can you explain why you selected 5% for Line 17!
- A. We considered that a fair return on the investment.
- Q. You didn't get it from the Interstate Commerce Commission's decision in Reduced Fares in 1922?
- A. I do recall some mention being mace of the Interstate 'Commerce Commission having stated that at sometime of other it was a fair return, but we consider it also to be a fair return on the investment.

President White: I would like to ask you one question [fol. 2010] before we get through here. Referring to your Exhibit No. 3, Page No. 6, where you use the investment in railway property used in transportation service for the Southern region, that, of course, includes Alabama, doesn't it?

The Witness: Yes sir.

President White: Now, take the figures showing the investment for 1941 of \$3,273,594,731,—can you give us the comparable figure that has been used by the Interstate Commerce Commission as some measure of fair value in its decisions in freight rate cases?

The Witness: No sir, I cannot.

President White: If you take the total investment in railway proverty for the United States as a whole, derived in the sa ay I understand you derived your figure, it is approximately \$24,500,000,000, isn't it,—or do you know?

The Witness: No sir, I do not. I do believe, but I am not really sure about that but that the Interstate Commerce Commission in arriving at its rate of return, does not include cash and materials and supplies, whereas cash and materials and supplies have been used in Sheet 6 of my Exhibit No. 3.

President White: But it is not your position, as I understand you, that the investment figures used here by you in your Exhibit No. 3 are figures used by the Interstate Commerce Commission when they undertake to determine whether the railroads in the Southern region are obtaining [fol. 2011] a fair return or as to what return they are obtaining?

The Witness: No sir.

President White: All right. My recollection is that those figures were brought out in the record in Ex Parte-148.

Mr. Bruce: Approximately \$17,000,000,000 vs. \$24,000,-

000,000 plus, difference.

President White: That is for the railroads in the country as a whole.

Mr. Bliss: The carriers have asked that you consider the record in Ex Parte 148—

President White: It will be available.

Mr. Bruce: The figures were in there, but that was strictly a revenue case.

President White: That wouldn't affect it. ?

Mr. Bruce: That was just a revenue case where you needed more money and these figures were not important in that case.

President White: All right, proceed.

### By Mr. Bliss:

Q. Will you look at Exhibit 5, the sheet for the Alabama Great Southern,—you show on Line 8, \$3,700,000, roughly, of federal and state income and federal capital stock tax against, in Line 6, net railway operating income of \$4,800,000, roughly. What per cent have you used to get taxes as high as that! Can you explain that! Is there some unusual feature to make the taxes that high?

[fol. 2012] A. In this connection, I will say that we contacted the tax department in Washington and asked them to give us as nearly an accurate figure on the accruals to August 31st as they could and to separate those accruals between the taxes other than income and federal capital stock tax and federal and state income.

Q. Doesn't the Alabama Great Southern Railroad Company have any bonds on which it pays fixed charges?

A. I assume it does.

Q. Well, that amount is deductible as an expense for in-

come tax purposes, isn't it?

A. I imagine all of those features are been given consideration in arriving at these taxes, although I didn't make this estimate; it was made by our tax department.

President White: You couldn't say whether that was net after deducting fixed charges on funded debt, could you?

The Witness: The fixed charges will come out of the net railway operating income as shown on Line 10; it would have to come out of that in order to keep the account

straight.

President White: That is true, but you are not able to say whether in setting out the figure for the federal and state income tax and the federal capital stock tax that is the gross figure or a figure derived after deducting your interest on your bonded debt?

The Witness: No sir, I am not qualified to say that, sir.

[fol. 2013] Q. Do you know the details of the computation of any of these tax figures?

A. I do not.

Q. You can't say of your own knowledge how accurate they are?

A. The party that gave them to me has been dealing with such tax matters for the last fifteen or twenty years, and I am sure that they are accurate.

President White: Anything else on cross examination?
Commissioner Harrison: I want to ask him something on this same exhibit.

President White: Exhibit No.-5?

Commissioner Harrison: No. 5. I notice that you have Southern Railway, it would be the same thing, you have investment, \$611,000,000, and then below that you have \$16,000,000 cash, and you have figured your return that you are entitled to not on the \$611,000,000 but on the investment plus the cash that you have there.

The Witness: Plus the cash and the materials and the

supplies.

Commissioner Harrison: Is that cash and investment or is that cash from the revenue—

The Witness: That is the cash balance at the end of the year.

Commissioner Harrison: That is not a part of the invest-[fol. 2014] ments, is it?

The Witness: The management always figures-

Commissioner Harrison: I am asking you if the cash that you have there is an investment.

The Witness: We always figure our return on the basis

of including cash in materials and supplies.

Commissioner Harrison: And you added your cash to your investments?

The Witness: Yes sir.

Commissioner Harrison: And you have taken your ratio of revenues, cash and investments, and arrived at 19 per cent?

The Witness: Yes sir.

Commissioner Harrison: And the way that you arrive at your return on your investment, you take the 19 from your 100 and take 81 per cent of your gross revenue?

The Witness: Yes sir.

Commissioner Harrison: And you figure that should be your return on your investment plus cash?

The Witness: Yes sir.

Commissioner Harrison: And it would be different if you left out the cash item and figured it on your investments alone, wouldn't it?

The Witness: Yes sir.

Mr. Bruce: You are permitted, at the present time, to do that and it becomes a part of your operating expense, your [fol. 2015] property tax and rents and so forth?

The Witness: Yes.

Mr. Bruce: But you are not permitted to charge against your operating cost excise and income taxes, is that right?

The Witness: I believe that is right, but the Southern Railway does accrue for that.

Railway does accrue for that.

Mr. Bruce: In your exhibit you have included an amount that you have set aside to retire your total taxes as they become due!

The Witness: Yes.

Mr. Bruce: That is all

By Mr. Bliss:

Q. Speaking of the cash, on Line 14, can you explain why the L&N Railroad needs 34,000,000—nearly 35,000,000 and the Southern only 16,000,000?

A. No, I can't explain that.

Q. The Southern Railway does more business than the Louisville & Nashville Railroad Company, doesn't it?

A. I couldn't make any explanation as to why that occurred.

President White: All right. Mr. Bliss: I think that is all.

President White: Any redirect examination?

Mr. Oliver: No sir.

President White: Any further questions from the bench?

(No response.)

[fol. 2016] President White: You are excused.

(Witness excused.)

Mr. Oliver: That completes our case.

President White: All right. Call the next witness.

Mr. Bliss: I will call Mr. Earley, who has not been sworn yet.

James S. Earley, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bliss:

Q. What is your name?

A. James S. Earley.

Q. Please state your address and occupation, Mr. Earley?

A. My residence is Waterford, Virginia; I am an economist employed with the Office of the Price Administrator.

Q. What is your background in economics?

A. I have been a student of economics since 1928 and have been teaching economics and engaging in research since 1932. I have been with the Office of Price Administration or its predecessor since August, 1940.

Q. What are your duties at OPA?

A. I am Assistant Chief of the Price and Economic Branch of the Research Division which was formerly on memoranda concerning the general problems of price stabilization and the prevention of inflation for Administrator [fol. 2017] Henderson, and recently for Justice Byrnes, Director of Economics Stabilization.

Q. Is it a part of your duties then to watch the whole price control program and the whole economy?

A. That is right.

Q. Do you have some exhibits that indicate the problems and the results so far achieved?

A. I have. I have only a few copies. I have five copies.

President White: We will get along with three up here.

Mr. Bliss: I ask that this be marked for identification as an exhibit.

President White: That will be marked as Exhibit No. 7.

(Exhibit No. 7, Witness Earley, marked for identification.)

• Mr. Bliss: Could we mark the charts 7-A and 7-B and so on?

Commissioner Lee: They are all bradded together.

President White: The documents now offered are all bradded together and the entire document, all of them may be referred to as Exhibit No. 7, and we will number them in the order in which they are bound together as Sheet 1, Sheet 2 and so on. Proceed.

The Witness: These exhibits are designed to illustrate the problems which we have faced in trying to stabilize the cost of living and prevent inflation. And to illustrate the importance of overall stabilization, the demand for which [fol. 2018] led to the recent Act of October 2, under which we are authorized by Justice Byrnes to intervene in any cases involving public utility rates and railway transportation rates.

This first chart, Page 1, indicates the growth of the war economy and the inflationary pressure which will arise out of almost all our production resources are devoted to war goods which are not available for civilian spending. At the same time, of course, people begin buying these goods, trying to spend on this shrinking volume of goods, placing great pressure upon price ceilings. This tendency you will note with reference to war goods and non-war goods will continue and become more acute in the future; the inflationary pressures are great now but will be corrected in

the future. It shows very diagrammatically the position

that we are in.

The next two sheets, Nos. 2 and 3, are meant to illustrate the somewhat better control that we have thus far obtained in this war than the last war by indicating the price of these various types of commodities, showing the great difference in the situation in World War No. 1 than in this war, beginning in January, 1929. Those were all wholesale prices and in all cases, the increase in price has been held down relative to the last war. We hope to continue that and even improve upon it by a stabilization from here on out or a virtual-not of all items, but as a general rule.

The importance of the anti-inflation program is only par-[fol. 2019] tially indicated by Sheet 3, but this brings out the importance of the savings to the Government. The significant thing is from the fact that prices have not arisen. as greatly in this war as in the last. During the first 32 months of this war, the cost of war munitions and construction is \$25,000,000,000. If we had to buy those munitions and other war goods at prices comparable to those of the first World War, in comparison to the beginning of the war, we would have had to have paid \$6,000,000,000 more, and we note that as the savings as the result of the price

control program. . You will notice in the righthand column which projects as the war expenditures estimated for May, 1942, to the end of next year, December, '43, the cost of war munitions and construction are estimated at \$130,000,000,000 and if prices rose to the same extent during the next few months, from May on, as they did in the last year, the cost to the Government would be increased by \$62,000,000,000. It is figures of that sort which we are attempting to save to the Government and to the taxpayers by keeping the prices down. The figures are larger now because of the continued growth in the war program. It works out around \$477 per capita,—and that is arrived at by simply dividing the \$62,-000,000,000 saving by the 130,000,000 people in the United States, and that, only makes a comparison with the prices as they rose in the last war and not the prices that might [fol. 2020] come about if we fail to control them in the present war. Inflation could go right on up as we have seenit in other countries.

Q. You have heard testimony as to the value of the rail-

roads in this country. How does that \$62,000,000,000 saved

compare to the value of the railroads' figure?

A. As I remember the figure set as the value of all of the American railways, it was about \$24,000,000,000. This figure of savings over the 20 months, May, 1942, to December, 1943, would be about two and a half times as much as the total value of the American railreads.

total value of the American railroads.

There are, of course, a lot of other reasons for combating inflation—the main one is that it would defeat the war program by upsetting production, labor relations and civilian morale, and the post war problem is also importance if inflation gets going, because the deflation which will almost inevitably follow with it, and the difficulty for years to come. I think economists are all agreed on that issue,—the vital importance of preventing any further substantial rise in the cost of living.

Sheet 4 shows the rise in wholesale prices and the cost of living index from August, 1939, to August, 1942. On the basis of August, 1939, as 100, the wholesale prices have risen about 34 per cent by that latter date and the cost of

living had risen about 18 or 19 per cent.

Q. You have indicated on that the date of the general [fol. 2021] maximum price regulation. Would you also explain in what portion of this period the Office of Price Administration, your predecessor agency, was working on a

price program?

A. We started working under the old National Defense Advisory Commission, of which Mr. Henderson was the Commissioner, for price stabilization, in June, 1940, and up until January, 1942, we were exercising our control informally,—we had no legislation, but we had certain powers by cooperation with the armed service—they might even take over a plant in case there was a violation of our informal effort to control, but it wasn't until the middle of 1941 that we ever projected an Act, and that was passed in January, 1942.

As a result of Pearl Harbor and the very rapid growth of the war program thereafter, we saw that even the selective control we had exercise-informally first and then under the Price Control Act of 1942 was not sufficient to hold the

control of the situation.

Q. What is selective control?

A. That is picking out the price that seemed to be getting out of line and placing a ceiling over that price or over those prices, over such commodities as we believed were necessary to control it and keep it within the proper range in the economy. For instance, it started with materials and second-hand machinery tools and bituminous coal, and it went from that right on down the line, and we had to get [fol. 2022] out specific regulations covering millions of transactions in the economy, and the thing was running away and hence, in May, 1942, we imposed the general maximum price regulations which imposed ceiling prices usually, generally after March, 1942, level over all things which were not controlled particularly under the Act.

This did not include public utility or transportation rates. Thereafter, as you can see from Sheet 5, some of the items in the cost of living which have now become the most important list for us to hold in line ceased going up,—for instance, rent, as rent controls were imposed, rents began to decline—this is a country-wide average; the prices of house furnishings tapered off and clothing prices went down somewhat, but food prices continued to mount. And, in general, we found our weaknesses under the Act and the general maximum price regulation lay in three fields,—one, farm prices, and the second, wages, and, thirdly, and to a somewhat lesser important branch, in public utilities and transportation.

Hence, the Act of October 2, 1942, which appointed the Director of Economic Stabilization and permitted the freezing of all prices, wages and costs entering into the cost of living and in the case of public utilities, as you know the Act directed that we should be notified of any increases and that we should intervene if we thought it necessary.

[fol. 2023] Mr. Bruce: Was that power decreed to the President, or was it decreed to the Office of Price Administration?

The Witness: No, there were certain changes in the Act which permitted us as the Office of Price Administrator to control items which we could not previously control or at certain levels where we didn't exercise control previously; such as in the case of farm production, where the highest price of 1942 could be imposed, as we couldn't do it before.

In the case of wages, the power was given to the President and by Executive order or directive it was delegated to Director Byrnes and, in turn, I believe it is being administered by the War Labor Board under his direction or at his direction.

In the case of public utility rates, it was directed that the notice of any suggested increase in any rate was to go to Director Byrnes and Director Byrnes gives us our directive as to what we shall do in such cases. It is under his instructions that we appear before this Commission.

Mr. Bruce: As I understand it, then your department was designated as the department to appear before the various

commissions?

The Witness: Yes sir.

Mr. Bruce: On ntility rates of various descriptions?

The Witness: Yes sir. The price simply shows the divergent movement and the elements in the cost of living index after May 15 when the general tax came in; it shows [fol. 2024] up the divergent movement which is on this other chart in a clearer fashion. Our fundamental viewpoint came from sad experience, you might say, in that it is necessary to go across the board in stabilization, wages, farm prices and other prices, and utilities prices, that is, you regulate one thing and another part of the structure starts getting out of hand, and other parts of the economy will go up and so forth,-labor rates, higher wages and so forth, and public utility rates will rise and labor and farmers will likewise' want an increase and that is because of the ineffectual character of regulation in a case like this and we feel like we should intervene here although this one isolated case is not important in the country as a whole, because it involves intrastate rates and it is only one state, but we have found that you will have to sit in on every front if you are going to make the whole program successful. Particularly important now is the labor front.

On Sheet 7, you see the movement in wage rates, and the Office of Price Administrator has felt very definitely for many months that wages had to be stabilized, and as you know, the War Labor Board worked out a schedule by which labor would be governed as to the cost of living index, and we feel if we can hold the cost of living index at a certain point that we can hold the wage front at the proper level. The rising of wages was highest in the important war in[fol. 2025] dustries and its effect on retail trades and

services.

We feel, as I say, that a case such as this, and cases similar to it are—that it is necessary for us to fight and to appear and place our case before the Commission for their consideration particularly because of the necessity of hold-

ing the cost of living so wage rates will not rise, under the Little Steel formula.

Sheet 8 shows the rise in salaries and wages, the annual rate of payments by months,—that shows the continued uninterrupted rise up to the time just shortly before the new Act was passed and an upward rise which we are trying to curb by curbing the cost of living and thereby permitting the War Labor Board and the Office of the Director of Economic Stabilization to impose effective wage controls.

On the final sheet is a comparison between rising income payments of which the largest single segment is salaries and wages and the associated change in the cost of living from August, '39, to March, '41, and from March, '41, to February, '42, those are the two periods shown. There is about a 17 per cent rise in the income payments in the early period associated with the small trades in the cost of living about 5 per cent, but the largest increase from March, '41, to February, '42, as the war program got under way, was associated with a very substantial increase in the case of living, the total index rising—

[fol. 2026] President White: What do you mean by in-

come payments?

The Witness: Those are all payments to wage earners and salaried workers, farmers, business men, people who get interest, rent, dividends, they are all, it is statistics covering the whole country.

President White: As an economist, what would be your opinion as to the effect during the period March, '41, to February, '42, on the cost of living of the increase in income payments between the dates August, '39, and March, '41?

The Witness: It would be a considerable hangover there; the earlier gross in income would in part be effective during the latter period.

President White: The great increase in wages brought

the increase in the cost of living?

The Witness: I wouldn't say only wages.

President White: That was a big part of it?

The Witness: Yes sir, wages or forms of income, all throughout the economy, there was a big rise in that period.

By Mr. Bliss:

Q. Your last two sheets deal with gross payments and includes increased employment?

A. Yes sir.

Q. Whereas you have one sheet in there which refers to

hourly rates?

A. Yes, Sheet 7 refers to average hourly earnings, the [fol. 2027] increased income payments are due a lot more people employed, working longer hours, and in most cases at somewhat higher rates per hour.

Q. But, of course, the gross payments have gone up much

more rapidly than the rates per hour?

A. Yes sir.

Q. Are railroad passenger fares included in the cost of living index?

A. Yes sir, they are.

Q. That is the same index which was used in connection with the Little Steel formula and in connection with measuring the accomplishments of the stabilization program?

A. Yes sir. Railroad passenger rates, it is true, are a

small part.

Q. Will you state what portion they are?

A. Well, transportation, personal transportation, as a rule, inter-city transportation, that is the transportation of persons is about eight-tenths of one per cent of the total cost of living, that is under the conditions as they exist today, and includes all forms of automotive transportation, buses, streetears and commutation, as well as inter-city railroad passenger fares. The importance of the intercity railroad passenger fares is indicated by the index as being one-tenth of one per cent.

Q. That is based on what figure?

[fol. 2028] A. Those were based on budgets, a nation-wide

survey 1935 to 1939.

Mr. Oliver: One-tenth of one per cent for what?

The Witness: For inter-city passenger fares, railway passenger fares, but that does not include buses.

Q. Then, that figure might perhaps be somewhat larger

if the index were to be recomputed now?

A. If it were to be recomputed, without question, it would be larger on account of the increased amount of travel and the shortage of automotive means of travel, particularly in connection with gasoline rationing.

Q. Now, one-tenth of one per cent seems like a very small amount, but are there any other items that you could mention that have around about that same weight in your index?

A. Yes sir; these are taken from the composition of the index, as is the other figure for passenger fares,-it is about of the same importance as blankets, work shoes, corn meal, salt pork and cotton overalls; cotton overalls, for example, have a weight of eleven-one hundreding of one per cent and corn meal one-tenth of one per cent; salt pork, one-tenth of one per cent; work shoes, elever, one hundredths of one per cent and blankets eight-one bundredth- of one per cent. So, we find that it is only a small part of the cost of living. but that is no reason for not imposing control over it. we do not control it, as well as other items, everything [fol. 2029] would go out of line, and while it is a very small item, there are other very small items also that should be controlled-in fact, you will find very few items which are really, if taken severally, a large proportion of the index which we have prepared.

Q. You mentioned the case of corn meal, and take that for example,—if the price of corn meal were allowed to rise about 331/3 per cent, there would still be other products

that could be substituted for it?

A. Yes sir.

President White: You are speaking as of today?

The Witness: Yes sir.

President White: And not as of next week?

The Witness: Yes, that is right.

Q. Are there many other services that could be substituted for rail transportation?

A. Well, of course, bus travel and automotive travel are

the main substitutes.

Q. Has the Price Administrator taken any action with respect to automobiles and rubber tires and gasoline?

A. Oh, they are all rationed,—at least, in the eastern states, and both tires and gasoline will be rationed throughout the country beginning December 1st, unless present plans are changed. Rubber tires are rationed throughout the country already as a matter of fact.

[fol. 2030] Q. Would you say that it will be possible to allow for much inter-city travel by private automobile?

A. Very little according to the experience on the East Coast and according to the rubber shortage throughout the country, there will be relatively little gas line available for that use.

Q. Will it be possible to allocate to the bus lines all of the

tires and gasoline and new buses that they want?

A. No, I am sure that it won't, but I presume they will get a better allocation than individual passenger car owners because of the essential character of their service.

Q. By that, you mean that they are common carriers to

the public?

A. The principle is that the gasoline should be available only in substantial quantities to essential driving. That will apply for the purpose of saving rubber throughout the country.

Q. Are you familiar with any of the fine experiences on

passenger fares!

A. Yes sir, I am. In three countries, Canada, Great Britain and Germany, railway passenger fares have been frozen. In Canada, railway passenger fares were frozen as of the seasonal level of 1941 when their general price ceiling came into effect in December, 1941.

President White: Did they also freeze wage levels? [fol. 2031] The Witness: Yes sir, with a cost of living bonus. In Great Britain, likewise, after passenger fares had gone up quite substantially, I think 15 to 20 per cent in general during the first year and a half of the war, then the Government stepped in and froze them. They have not risen since.

In Germany, where the railways are state-operated, so far as we have been able to determine, they have not been increased since the war began.

Q. Is it a part of your research in your position to check the foreign experience as far as possible, is that correct?

A. Yes sir.

President White: In Germany, the railroads are owned by the government, or by the state, I believe they call it. To what extent is that true in England and Canada, Great Britain?

The Witness: I think it is not at all true; I think the British Government owns no railroads in the British Islands. If so, certainly it is an infinitesimal part of the whole system.

President White: Hasn't the British Government provided any subsidy for the railroads for operating losses? The Witness: They have done this: Since the fall of 1941,

they have taken out of the railroads' hands the fixing of rates and they are paying the railroads flat rentals, based on pre-war earnings, more or less. And the government [fol. 2032] then fixes the rates and there may be some losses involved in those two, in the comparison between the rentals and what they take in. We suspect there is, but the accounting that we can get hold of does not prove it. It is true that they did stop at a certain rate, and the freight and passenger rates won't go up any further, and they will take the loss.

President White: On the basis that you are familiar with it, is it your judgment as an economist, that the British plan is designed to maintain the solvency of their railroads?

The Witness: Definitely.

President White: On a base not less than it was when the war began?

The Witness: Yes sir, that is quite true.

President White: In other words, to maintain the status

The Witness: Yes sir. It was put in after a year and a half of the war and in that intervening period, there had been considerable price involvement and I am not sure it went back to the pre-war level, but it doesn't maintain that level.

Mr. Bruce: Has the government taken over the railroads in Canada?

The Witness: No, except to the extent that they own the Canadian National.

Mr. Bruce: They own part of the systems, but the independent lines have been left independent!

[fol. 2033] The Witness: Yes.

Mr. Bruce: Have the rates been frozen there!

The Witness: Yes, they froze them initially at the December—I believe it was on December 1, 1941, that level, and then later they made some adjustment because of scasonal differences in rates, and excursion trains and so forth. The present system is that the rates can be no higher than in 1942 or '43 in any subsequent year for the duration than they were in the corresponding months of 1941; and the War-time Prices and Control Board, which is the counterpart of the Price Administrator, up there, has authority to veto any increase—they were given that direct authority.

Q. Speaking of the American railroads, has the Research Division made any study of the prices of materials and supplies bought by rail carriers?

A. Yes sir, they have. I have one right here.

Q. Can you advise what that study shows as to the level

of the prices or the movement of the prices?

A. It is not inclusive, of course, but it does pick out a number of important products which the railroads purchase, and it computes the per cent increase in price from the beginning of the war—that is from August, 1939, and shows a competitive rise in price on those same goods in the number of months beginning with this war—rather, I mean the first World War, the last war.

[fol. 2034] Q. Beginning with August, 1914, do you mean?

A. Yes sir.

Q. What is that for some of the commodities?

A. Bars, angle, track equipment, in World War No. 1, during the same period, and up to date in this war, they rose by 117 per cent in the other war and in this war they have not risen at all.

Q. All right.

A. Bolts, track, for steam railroads in World War No 1, they roes 163 per cent during this period, and in World

War No. 2, they rose 14 per cent.

Bituminous coal, in World War No. 1, it rose 180 per cent, that is the per cent increase, but not shown by the index, because by the index it would be 280; and in World War No. 2, for bituminous coal, 15 per cent.

Petroleum, World War No. 1, it rose 75 per cent, whereas

in World War No. 2, for the same period, 17 per cent.

Tie plates, World War No. 1, 94 per cent; World War No. 2, none

Rails, World War No. 1, 33 per cent; World War No. 2, none.

Those are the only items that we have computations for, and there were some computations made here as to the savings effected by the OPA price actually on four items bought by railroads. These savings were computed by taking the difference between the rise in price in this war and [fol. 2035] the last war, and applying that to the estimated 1942 requirements,—in other words, if the estimated 1942 requirements had been purchased at the higher prices of World War No. 1, the railroads would have paid these amounts in addition to what they have had to pay on the es-

timates of the 1942 requirements,—petroleum, \$45,000,-000—

President White: That is the railroads of the entire

country?

The Witness: Yes sir. Bituminous coal, \$395,000,000; steel rails, \$28,000,000, tie plates, \$142,000,000—total on

those four items is \$610,000,000.

I have here a list of products purchased by railroads, all of which are under price control. I don't know whether it is of interest or not, I don't know whether it is of interest to you, I don't know whether it is of sufficient importance to you or interest to you to put it into the record before the Commission.

### By Mr. Bliss:

Q. Generally speaking, all things which are purchased by the railroads are affected by the price stabilization program?

A. Yes sir, including wages under the Act of October 2, 1942; there was a stabilization agreement, too, before

that time. .

Mr. Bruce: Do the railroad employees come under your [fol. 2036] jurisdiction or is that left under the jurisdiction of the War Labor Board?

The Witness: It is under the jurisdiction as I under stand it, technically, under the jurisdiction of Mr. Justice Byrnes now, who has delegated that authority, so far as wages are concerned, to the War Labor Board, and they work under his directives; he can lay out the broad policies to be followed.

Mr. Bruce: Is that the only group of employees that might come under that classification as being under the

War Labor Board!

The Witness: No, it extends to all employees, I think, potentially; I think they have made exception on firms employing less than eight persons, and recently there was a temporary exception for farm labor, but potentially, it does cover the whole wage field and any group could be brought under it by the terms of the Act, as I would interpret it. Salaries over \$25,000 are put under the Treasury control by the Director.

President White: Anything further on direct?

Mr. Bliss: Yes.

Q. Does OPA consider there are some commercial traveling that is essential?

A. We do, and the reason commercial travelers didn't get more under the gasoling rationing was that it was felt [fol. 2037] that alternative means of transportation were available, railroads and buses in most cases. But for purpose of fixing prices, setting price ceilings, we would consider expenses on account of commercial traveling as a perfectly ordinary item to be considered in fixing the prices.

Mr. Bliss: May I have this sheet of paper marked as an exhibit?

President White: This will be marked Exhibit 8.

(Exhibit No. 8, Witness Earley, marked for identification.)

Q. Will you explain this statement that has been identified as Exhibit No. 8?

A. This was not made under my direction, but was made in the Transportation Division of the Office, but I have had explained to me how it was derived, and as you will note, the source are the Interstate Commerce Commission, Bureau of Transport Economics and Statistics, which, as I understand it, is open to the public. It shows the monthly trend in 1940, '41 and so in in 1942 through July of the vevenue passenger miles per passenger carrying car mile in the Southern region, Class I steam railways, indicating roughly the number of passengers carried per car, per passenger car. The important facts seem to be the substantial percentage increase in each month of 1942 over the corpresponding months in 1941, reaching a point over 50 per cent,—the lowest being 34 per cent; and, secondly, a very [fol. 2038.] substantial and continuous growth during the first eight months of 1942 itself when from January to July the figure measuring passengers per car goes from 17:6 to 27.0, -all of which figures, by the way, were bigger than the corresponding months of 1941, showing that not only was 1941-not only has 1942 been much better from the standpoint of the use of equipment for revenue earning purposes, but that this is still continuing, that this trend is continuing and that it should be even greater at a later. date unless there is some sudden reversal of the factors which seem to be operating.

President White: Is there anything further on direct?
Mr. Bliss: Yes. I have a few nore questions.

Q. Does the Office of the Price Administrator ever have

to make upward adjustments in prices?

A. Yes, we do. We do it broadly on two bases,—one where it is necessary to do so for the continuance of essential production or the essential services. Above all, we would not wish to prevent essential activities on which the winning of the war depends; if anything were essential and a price increase were proven to be needed to carry on that service, we would raise the price, and, secondly, where the product, where the cost had risen so that profits generally in the industry—that the price of production had so risen to reduce profits below the preferred war level of '36 to '39, then our general policy there is to look at the overall profit [fol. 2039] position of the producers or the persons performing the service, and if their overall position shows that they need more profit to carry on this service, we will then raise the price.

Q. Is that done before or after income taxes?

A. Before; Congress, in levying income and excess profits taxes, it intended those persons would pay the taxes and if we raised the prices after the payment of taxes the consumer would pay the taxes, so all of our computations are before taxes.

Q. If the cost should rise but still the profits should remain up to those levels of 1936 to 1939, you would not make

adjustments upwards?

A. We would not unless it could be proven that an essential service could not be carried on without larger profits,—that it could not be carried on for the prosecution of the war without larger profits than those pre-war profits.

Mr. Bliss: That is all

Cross-examination.

#### By Mr. Oliver:

Q. Mr. Earley, you are not undertaking to say here, are you, that the rates that the railroads are proposing, the rates under suspension, are unreasonable, are you?

A. I wouldn't say that myself, because I am not a rail-

road expert.

[fol. 2040] Q. Does the OPA recognize the jurisdiction of the Interstate Commerce Commission to fix interstate fares

and charges!

A. Yes sir, and the theory of the new Act is that the Interstate Commerce Commission and the other state commissions shall act as the body putting through the policies of the October 2nd Act and we simply call things to their attention. We appear before them.

Q. It is a fact, isn't it, that before the recent increase in interstate fares went into effect, the OPA entered a very full protest, giving its reasons for opposing the increase

in the interstate passenger fares?

A. They entered a protest that I have seen; Ldon't know' whether it was a full protest or not; I understand some recent data was not available.

Q. Well, the fact is that they did enter a protest and gave reasons for so doing?

A. Yes sir.

Q. And notwithstanding that, the Interstate Commerce Commission did authorize the increase in the interstate fares?

A. Yes sir.

Q. As I understand it, it is your position that the proposed increase in fares in Alabama covering intrastate transportation would be inflationary?

A. Yes sir.

Q. Yop stated, I believe, that the inter-city passenger [fol. 2041] fares constituted one-tenth of one per cent of your cost of living index?

A. That is right.

Q. Have you undertaken to make any estimate of what per cent the increase in Alabama would bear to your price index?

A. No.

° Q. Would it be as much as one one-hundredth of one per cent, bearing in mind that the interstate fares all over the United States are on the basis that we are seeking to put into effect here and that that is largely true on intrastate fares except in the South?

A. I haven't made any computations; I know that the index is made up of fares applicable in three cities of Alabama, Mobile, Montgomery and Birmingham, so that it would affect the index that we have in Alabama, but how

important weighting is given to those three cities, I don't know.

Q. Or how important Alabama would be in relation to

the rest of the United States as a whole?

A. Any importance to Alabama would be based upon those three cities as it affects them in these various cities,

Q. But it would be infinitely less than one-tenth of one

per cent, would it not?

A. It wouldn't be infinitely less, but it would be substantially less.

Q. You mentioned incidenally, more or less something [fol. 2042] about this farm labor proposition. Hasn't the ceiling been lifted on the farm labor within the last week or ten days?

A. I believe that is true; I understand that at least there

is a temporary listing for the harvest.

Q. Can you give this Commission any good reason why two passengers traveling in the same train, one traveling interstate and the other traveling intrastate in Alabama should pay different fares,—possibly traveling in the same car?

A. From the standpoint of the stabilization program, of course, a good reason would be that those rates now are different and pending any reduction in the other rates which maybe means the only way to eliminate the discrepancy, would be breaching the cost of living front. From the standpoint of transportation, I should think there might be some differences in the service, in interstate and the intrastate travel.

Q. I have restricted it to the same train and possibly in

the same seat in the same car, as for that matter.

A. Then I would think only because of the origin of the traveler who might get on at some point and go part way over a train which had very inferior service and then get on an interstate train for the rest of the intrastate journey and happen to sit down with a person in interstate traffic.

Mr. Oliver: That is all.

President White: Let me ask you this question: As an economist, you have been making a study here of trans[fol. 2043] portation along with other trains. What would be the effect if the coach fares and the other fares that are sought in this proceeding are increased on the railroad if we assume that the fares on the common carrier buses

in Alabama are not also increased—assuming the present fares on the buses are on the same level with the present coach fares of the railroad,—what would be the effect of do-

ing that?

The Witness: There would be a strong tendency for people to try to ride the buses rather than the trains, but if the situation in Alabama is similar to that in Virginia, with which I am familiar, they just wouldn't be able to get on the buses and you would have to ration bus travel somehow. They certainly would try to ride the lower cost form of transportation.

President White: Any other questions?

Mr. Bruce: Is it the intention of your department, Mr. Bliss, to appear before the other Southern State regulatory bodies when similar proceedings before the State Commissions are held? I wonder if counsel can answer that question for me.

Mr. Bliss: We have already appeared in Florida, South Carolina and Virginia. We intend to appear in the other states where prior authority is required, in Georgia, North Carolina and Louisiana; the Tennessee Commission has suspended but has not set a date for hearing, and there is a hearing set in Jackson, Mississippi, a week from today, [fol. 2044] and we expect to attend them all.

President White: Anything further, gentlemen?

Mr. Bliss: I want to ask about briefs.

(Witness excussed).

President White: It seems that your presentation, so far as your Office is concerned, is rather brief and unless you want to comment, of course, on the evidence that the carriers have offered, I do not know whether you would desire to file briefs. As I understand the position of the department which you represent, it is that you are not undertaking to determine or pass on or help to determine the question of the reasonableness of the rates? What you desire to bring before the Commissions is the effect that the proposed increase will have on the question of the rise of prices as affecting the general economy and the war economy at this time, is that about correct?

Mr. Bliss: It is correct, but I think we go a little further than that. If we were convinced that the rail carriers needed the money in order to continue essential services, and we consider their services essential without argument, we would not be opposed and we might desire to criticize

their financial exhibits in some particulars.

President White: As I understand it, there has been no such position urged here that unless they are given this increase that they cannot carry on, that is during the war or [fol. 2045] during the emergency or during the period after the war, and there has been no such argument offered here, as I understand it, and no such evidence along that line, and you have heard their statements. They are offering it not entirely for revenue purposes, but not ignoring that element altogether, but for the purpose, of making the fares uniform, for one thing, and because they have not earned a fair return over the preceding years for some period, and such things as that as covered in their evidence.

Of course, we have no objection to your filing a brief. I think we ought to try to determine the case within a reasonable time; we ought to get the transcript of these proceedings in our hands before we underake to decide the case, and that will probably take us ten days or two weeks. Would you need the transcript to prepare your brief in case you desire to file a brief? Do you expect to get a copy of the

transcript, Mr. Bliss?

Mr. Bliss: I have not ordered one yet, but I probably will.

President White: How long would it take you to prepare and file a brief?

Mr. Bliss: It shouldn't take us very long, but it may be that it is not necessary if it would delay the Commission unduly, in that event, we might want to waive it and, of course, one point we want to bring to your attention is on the tax question. We have not argued with the witnesses [fol. 2046] about income taxes, but that can be handled by a brief reference to Ex Parte 148.

Mr. Bruce: May I interrupt for a moment? I don't know whether you are familiar with the law or not—the Alabama law states that the Commission does not have authority to suspend beyond 20 days without the approval of all respondents. Will you agree to the extension of that time?

Mr. Oliver: The tariffs were suspended to January 30th,

as I recollect it.

President White: These rates couldn't become effective until January 30th under the suspension order unless we issued an order to the contrary.

Mr. Oliver: I would like to say this, gentlemen, without intending to interrupt you—that we are very anxious in Alabama as we are in every state to get these fares in just as soon as possible and so far as I am personally concerned and so far as the carriers are concerned, I am willing to waive the filing of briefs, of course, unless the OPA wants to file one.

President White: Certainly your financial showing doesn't show that the railroads are faced with immediate

bankruptey.

Mr. Oliver: We haven't tried to show that and don't argue that, but we feel in view of our showing on passenger revenue for the past six or eight years—I haven't gone [fol. 2047] back of that, that the small increase that we are here seeking is certainly not unreasonable, but we haven't pressed it entirely, as you stated, on the revenue needs and we are not exactly depending on it wholly for that purpose as we have so many times in the past been forced to do.

Mr. Bliss: This can be off the record.

President White: Off the record.

(Discussion of the record.)

President White: The Commission will take the proceedings with the evidence and give it consideration for order.

(Whereupon, at 6 o'clock p. m., Tuesday, November 24, 1942, the hearing in the above-entitled matter was closed.)

[fol. 2048] I. C. C. Docket 28963—Exhibit 19

#### Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of August, A. D. 1942

## Ex Parte No. 148

Increased Railway Rates, Fares, and Charges, 1942

No. 26550

Passenger Fares and Surcharges

It appearing, That in No. 26550, Passenger Fares and Surcharges, 214 I. C. C. 174, the Commission found, among other things that the regular passenger-fare structure of the railroads of the country, including those in southern

passenger association territory, with certain exceptions not here important, would for the future be unreasonable to the extent that it might exceed 2 cents per passenger-mile in coaches, without prejudice to the maintenance of lower fares in any one or more of the major districts of the country; that by order of January 21, 1942, in Ex Parte No. 148, Increased Railway Rates, Fares, and Charges, 1942, 248 I. C. C. 545, the Commission approved as reasonable an increase of 10 percent in the passenger fares then in effect; and that such increased fares became effective February 10, 1942;

In further oppearing, That on July 14, 1942, the railroads operating in southern passenger association territory filed a petition in No. 26550, to which no reply or protest has been received, seeking a modification of our findings and outstanding orders therein to the extent necessary to enable such petitioners to publish and file tariffs increasing their basic coach fare from 1.65 cents (1.5 cents plus 10 percent)

to 2.2 cents (2 cents plus 10 percent) per mile;

And it further appearing, That a basic coach fare of 2 cents per mile was approved by the Commission for application prior to Ex Parte No. 148 on railroads generally throughout the country, including the lines of said petitioners; that a general increase of 10 percent was authorized to be made in all passenger fares in Ex Parte No. 148, for the reasons set forth in the report therein, supra; and that a basic coach fare of 2.2 cents per mile is now maintained on Class I railroads generally throughout the country, with the exception of the aforesaid petitioners:

[fol. 2049] It is ordered, That the said petition in No.

26550 be, and it is hereby, denied.

It is further ordered, That the order of January 21, 1942, in Ex Parte No. 148 be, and it is hereby, further modified so as to authorize the aforesaid petitioners to apply the increase of 10 percent approved in said order to a basic coach fare of 2 cents per mile on the lines of said petitioners, subject to the rule for the disposition of fractions as modified by order of July 6, 1942, in said proceeding, and that in all other respects said order of January 21, 1942, shall remain in full force and effect.

By the Commission.

[fol. 2050] I. C. C. DOCKET 28963—EXHIBIT 20

Before the Interstate Commerce Commission

Reply of Respondents to the Petition of Mr. Leon Henderson, Price Administrator of the United States, Seeking Suspension of Increases in Certain Passenger Fare Schedules Filed to Become Effective October 1, 1942

To the Interstate Commerce Commission, Washington, D. C.

Respondents, in reply to said petition, respectfully say:

I

Respondents filed tariffs with the Commission to become effective October 1, 1942, increasing their passenger fare in coaches from 1.65 cents per mile to 2.2 cents per mile under the authority of an order entered by this Commission on the first day of August 1942, which provided in part as follows:

"And it further appearing, That a basic coach fare of 2 cents per mile was approved by the Commission for application prior to Ex Parte No. 148 on railroads generally throughout the country, including lines of said petitioners; that a general increase of 10 percent was authorized to be made in all passenger fares in Ex Parte No. 148, for the reasons set forth in the report therein, supra; and that a basic coach fare of 2.2 cents per mile is now maintained on Class I railroads generally throughout the country, with the exception of the aforementioned petitioners:

"It is further ordered, That the order of January 21, 1942, in Ex Parte No. 148 be, and it is hereby, further modified so as to authorize the aforesaid petitioners to apply the increase of 10 percent approved in said order to a basic coach fare of 2 cents per mile on the [fol. 2051] lines of said petitioners, subject to the rule for the disposition of fractions as modified by order of July 6, 1942, in said proceeding, and that in all other respects said order of January 21, 1942, shall remain in full force and effect."

It is these tariffs, publishing fares already approved by the Commission, which protestant is seeking to have sus-

pended.

The fares which these respondents are seeking to make effective have been approved by this Commission and apply today on railroads throughout the United States, including important railroads in the South, other than your respondents, such as the Illinois Central; Gulf, Mobile & Ohio; St. Louis-San Francisco; Columbus & Greenville, and others.

#### II

Under the heading "Protestant, His Functions and Duties," protestant states, among other things, that he has been "charged with the duty of rationing gasoline on the Atlantic seaboard of the United States which includes about one-half of the Southern Region." This territory, in which protestant has been charged with the duty of rationing gasoline, includes Eastern and New England States where the passenger travel is far greater than in Southern territory and where the passenger fares in coaches are exactly the same as those which respondents are now seeking to make effective over their lines, and which fares the Commission has already approved for application over respondents' lines.

#### III

Under the heading "The Proposed Adjustment," protestant states that prior to February 10, 1942, the basic passenger fares within the South were 1½ cents per mile in coaches and 3 cents per mile in Pullman cars. This is an incorrect statement. While the passenger fares in the South generally prior to February 10, 1942, were 1½ cents per mile in coaches, these fares were not the basic coach passenger fares, but were in the nature of special and reduced experimental fares which were established voluntarily by respondents for the specific purpose of attracting additional passenger travel.

In Passenger Fares and Surcharges, 214 I. C. C. 174, decided February 28, 1936, referred to by protestant, the Commission found that a coach fare of 2 cents per mile [fol. 2052] would be reasonable for application throughout the United States, including Southern territory. The Commission also specifically found that the lower "experimental

fares" then maintained by respondents for application in Southern territory were not unreasonable or otherwise unlawful. In other words, the Commission specifically found that a 2-cent per mile coach fare in the South was not unreasonable, but that if respondents desired to continue an experimental fare of less than 2 cents per mile, such a fare would not be unlawful.

#### IV

Under the heading "Commission Has Not Approved Proposed Rates in Order of August 1, 1942," protestant undertakes, in effect, to say that the order of the Commission was merely permissive and carried no approval of the proposed

fares or finding of lawfulness or reasonableness.

In answer to this contention respondents respectfully refer the Commission to its order of August 1, 1942, as heretofore quoted. As previously stated, in Passenger · Fares and Surcharges, supra, the Commission, after a most exhaustive investigation, approved as reasonable a coach fare of 2 cents per mile for application throughout the United States. In Increased Railway Rates, Fares and Charges, 1942, 248 L. C. C. 545, decided March 2, 1942, hereinafter referred to as Ex Parte 148, the Commission again reviewed the entire passenger fare structure throughout the United States and approved a 10 percent increase in all passenger fares. This resulted in a passenger coach fare of 2.2 cents per mile on all railroads throughout the United States, including certain railroads in Southern territory, excepting only the lines of respondents. It resulted in a fare of 1.65 cents per mile on respondents' lines solely because respondents still had in effect the experimental fare of 11/2 cents per mile in coaches, and only asked for a 10 percent increase in the then existing fare.

In its order of August 1, 1942, the Commission amended its order of January 21, 1942, in Ex Parte 148 and therein authorized respondents to apply the increase of 10 percent approved in said order to a basic coach fare of 2 cents per mile on the lines of respondents. In other words, the Commission, in that order, approved the coach fare which respondents are seeking to make effective in the tariffs filed to become effective October 1, 1942.

Protestant asserts that when respondents' petition of July 14, 1942, was filed with the Commission there were

[fol. 2053] no facts before the Commission concerning current revenues, expenses, operating conditions, and related facts, and further states that the petition was void of evidence of probative value, and merely relied on a decision by the Commission based on conditions in 1935. On the contrary, respondents relied upon that decision, Passenger Fares and Surcharges, supra, as well as upon the decision of this Commission in Ex Parte 148, handed down as late as March 2, 1942, and also upon the evidence which was before the Commission and the facts found by the Commission in that proceeding. Respondents also relied upon other facts set forth in their petition to the Commission of July 14, 1942, as reference to that petition will disclose. The Commission had before it the entire record in Ex Parte 148 when, in response to the petition of July 14, 1942, it amended its order in said proceeding for the specific purpose of enabling these respondents to establish a coach fare upon the level which it had approved for general application throughout the entire United States.

In answer to the remaining portion of this part of the protest, attention is directed to the fact that in Ex Parte 148 the Commission had before it a complete picture of the financial condition of the Southern lines, all economic conditions, and all other matters referred to by protestant.

V

With reference to the matters set out by protestant under the headings "Passenger Revenues of Respondent Carriers Best in Years" and "Passenger Service Operating Ratios" respondents say:

It is, of course, true that there has been a substantial and progressive increase in passenger travel and revenues in the first 7 months of 1942, as compared with the same period for the preceding year, or with previous years. This is true not only in the Southern territory but throughout the entire United States. Respondents have not had an opportunity to study the revenue and traffic statistics shown in the Exhibits attached to protestant's application for suspension, but point out that these data are wholly insufficient to sustain protestant's position, for the reasons given below:

1. The statistics used by protestant relates to the total passenger movement in the Southern Region without separa-

tion as between coach and sleeping car traffic, whereas the increase in fares sought relates only to coach travel, the revenue from which aggregates less than 50 percent of the [fol. 2054] total. Moreover, this 50 percent includes a substantial volume of travel by furloughed military personnel at a fare of 1½ cents per mile, upon which no increase is proposed. Again it should be mentioned that the statistics for the Southern Region include revenue and traffic data relating to railroads which had in effect in 1942 a basic coach fare of 2 cents per mile (2.2 cents per mile effective February 10, 1942). The contribution of these particular railroads to the totals used is substantial in amount.

- 2. Neither the protest nor the statistics present any information as to the unprecedented increase in costs which has attended the increase in revenues. An increase in gross passenger revenues is in no wise indicative of a corresponding increase in the net revenue result of passenger operations. This is true particularly when the increase in traffic has involved heavy special movements of the armed forces of the United States, as has been the case, with the attendant increases in expenses resulting directly from such movements, as well as from the handling of empty equipment to and/or from origins and destinations. Incidentally, the effect of these costly special movements is clearly reflected in the statistics on page 1, column 2, of protestant's Exhibit A, where average number of passengers per car during the first 6 months of 1942 is shown as only 21.2. Obviously, this average is depressed by the inclusion of the heavy movements of empty equipment referred to above.
- 3. Figures showing the operating expenses applicable to passenger operations for the year 1942 to date are not available and can not be produced within a reasonable time. However, it is evident that the full impact of increases in labor pay granted in 1941 will not be fully evident until the figures for the year 1942 are available. Moreover, 1942 operating costs unquestionably will reflect increases over 1941 in costs of materials and supplies.
- 4. In addition to ignoring increased operating expenses attending the existing heavy volume of passenger business, the protest and supporting statistics give no adequate con-

sideration to the tax burden which will attach to any increase in passenger revenues.

0

Protestant's Exhibit B shows certain figures which purport to be the accruals of the railroads in the several regions for Federal income taxes during the first 7 months of the years 1942 and 1941. The source of these figures is said to have been data on file with the Interstate Commerce Commission, but respondents are not aware that any reports [fol. 2055] showing such information are filed with the Commission except on a calendar year basis. However, irrespective of the source, the information shown can not be accepted as correct, inasmuch as the amount of Federal income taxes applicable to the year 1942 cannot yet be determined.

5. Protestant's petition and statistics give no consideration to the matter of a return on the investment of the carriers in the road and equipment used in performing passenger service. This is an element which unquestionably should be considered in any comparison.

#### VF

Respondents specifically deny the allegation in said protest that they are "seeking to take advantage of present war conditions". The allegations of this portion of the protest have no particular application to these respondents but would apply with equal force to railroads throughout the country, including those roads whose fares are already on the level which respondents are here proposing to make effective.

Respondents also deny that in their petition of July 14, 1942, it is alleged that the principal reason for this proposed increase is "the feeling on their part that due to war conditions which have seriously affected their competition they are able to increase these rates." Respondents did allege in said petition that conditions existing at the present time are materially different from those which obtained prior to 1941, and that, in their opinion, if the proposed increase should become effective it would not result in any reduction in the volume of passenger travel, but, on the other hand, would bring about a substantial increase in petitioner's revenues from passenger operations. If it be true, however; that the proposed increase in passenger fares would have a tendency to bring about some reduction in passenger

travel in coaches, it may be said that this would be in line with the policy of the Director of the Office of Defense Transportation.

#### VII

Further answering protestant's petition and summarizing in part, respondents say:

- 1. The fares which respondents are seeking to make effective have been approved by this Commission for application throughout the United States, including the South. These fares apply today everywhere in the country excepting only over the lines of respondents.
- [fol. 2056] 2. The only reason the fares which respondents are seeking to make effective are not now in effect is because of the voluntary continuance by respondents of the present low "experimental" fares which were made effective at a time when respondents' coaches were almost empty and respondents were trying to get passengers on the trains.
- 3. The conditions which brought about the establishment by respondents of the present extremely low coach fares, which, in effect, may be termed "excursion" fares, no longer exists, and, therefore, there is no occasion for respondents to continue such fares. The fares which respondents are seeking to make effective were not published for the purpose of discouraging travel. They were published for the purpose of placing passenger fares in the South on a fair basis, and on the same basis as applies throughout the entire United States. If as a result of these fares there should be some reduction in unnecessary travel, it may be said that this would be in line with the policy of the Director of the Office of Defense Transportation.
- 4. Protestant speaks of "relatives and friends of men in the armed forces who unable to use private automobiles are using railroad coach transportation to and from the various Army camps scattered throughout southern territory." Respondents are not seeking to charge "relatives and friends" of men in the service more than "relatives and friends" of men in the service are now paying generally for passenger transportation in the North, East, and West. Moreover, these "relatives and friends", if the proposed fares become effective, can still travel to and from the Army.

ca po fu

ce

camps by buying round-trip tickets at less than 2 cents per mile. Moreover, the soldier and sailor in uniform on furlough can still travel over respondents' lines at 11/4 cents per mile.

5. It is noticeable that the protestant does not give any reason why he insists on fares over the lines of these respondents lower than the fares applying today elsewhere throughout the United States and over certain important lines in Southern ferritory. Why should one travel in a day coach over a Southern line at less per mile than is being paid today over the great trunk lines of the country north and west, fares which have been approved repeatedly by this Commission?

[fol. 2057]

#### VIII

Premises considered, respondents pray that the Commission decline to suspend their tariffs increasing certain coach fares, as prayed by protestant, and permit said tariffs to become effective as scheduled.

Respectfully submitted. M. B. Duggan, Chairman, Southern Passenger Association. F. W. Gwathmey, W. A. Northeutt, W. N. McGehee, Seddon G. Boxley, Attorneys for Respondents.

Washington, D. C., September 25, 1942.

EXHIBIT NO. 21

[fol. 2058]

ICC Docket 28963 Ехнівіт No. 3 Before the Public Service Commission of the State of Alabama in the Matter of Proposed Increase in Passenger Fares

[fol. 2059]

Docket No. 148 8618-Witness: Beight

Average (As required to be computed by Interstate Commerce Commission and annually reported thereto) Net Railway Operating Deficit -- Passengel State of Alabaina Class I Railroads

1960 1939 1937 Road Atlanta, Bgham. & C Atlantic Coast Line. Mabama Great Sou

	•	y			•	993
	\$748.091 221.697 7.942,598	1,454,748 628,405 9,616,471 6,911,180	1,220,362 3,632,643 6,662,243 10,212,390 307,246	\$49,558,074	Average 56% 113% 39% 110% 176%	286%%%%%%%%%%%%%%%%%%%%%%%%%%%%%%%%%%%%
	\$1,269,901 326,212	2,091,309 619,770 11,491,056	1,706,194 4,900,875 11,026,177 14,232,778 392,978	230	1941 10%% 10%%	68588 68089 70888 70888 70888 70888 70888 70888 70888 70888 7086 7088 7088
	1940 227,	532,	6,4/4,811 1,163,813 3,165,201 7,526,443 9,177,690 294,080	\$47,621,072 \$68,851 Wipe Out Net Railway	1940 90% 533% 144%	105.7% 105.7% 140% 157% 35.7% 35.7%
	1939 \$575, 195,	6,505, 1,178, 551, 8,807		469 Ord	Operations 1939 99% 99% 66% 66%	2014 104 104 104 104 104 104 104 104 104
te of Alabama ss I. Railroads —Passenger Revenue	1938 \$626,567 186,021	6.916. 1.212. 615.	9=0.40	246	Passenger Ope 1938 83% 149% 51% 150%	170 170 181 184 184 185 185 185 185 185 185 185 185 185 185
S 2 2	•	7.7 2.503 7.503 8.603 8.603 8.603	5.00.00	308, 49,832, state of Class I	Mound 1937 146% 146% 32%	22.08.3.2.2.2.2.3.3.2.3.3.3.3.3.3.3.3.3.3.3.
A Second	1936	6, 762, 961 1, 412, 130 699, 827	9, 200, 836 6, 594, 986 1, 116, 144 3, 428, 601 4, 626, 017 9, 869, 700	283,655	Passenger Revenue Operating De 1936 71% 96% \$41%	25 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5
				Ö	hich (102)	
	Road			Reports to I.C.	Road Alabama Great Southern Atlanta, Birmingham & Coast	Central of Georgia Central Gulf, Mobile & Ohio Illinois Central Nashville, Chatta, & St. Louis St. Louis & San Francisco Seaboard Air Line Southern Western Ry, of Alabama.
[fel. 2060]		B&C CL ent. of Ga.	E Cent Cent N C & S L S L SF S A L	Sou. W. Ry. of Ala. Total Source: Annual Reports to I.	Percent Road Alabama Great Southern Atlanta, Birminghem &	Central of Georgia Calf, Mobile & Ohio Illinois Central Illinois Central Nashville & Nashville Nashville & San Francisco St. Louis & San Francisco Seaboard Air Line Southern Western Ry. of Alabama.
~ £		<<<0		1 . / . /		. / /

994		Average	215	639	.088	.036	.953	268	835	312	133	838			154	248	. 899	431	8:	211	341	200	023	133
		NAV ILEI		639	.c	- 07	4.	4-			9	36							- 4.	•				133
	1940		315	639	2,093	1.973	4.949	11111	4,769	4,310	133	36,617 3		361	154	248	571	200	171	112	340	200	1,070	133
1.4	ear 1939	у.	. 315	639	1.871	2.004	87.4	1.111	4,820	6,614		36,744	0.0	281	7	248	978	128	1.171	112	340	508	1.070	4 630
hama	d at Close of Ye	A—System	315	639	1.871	2,004	4.925	. 911'110	4,843	6.690	133	016.45	B-In Alaban	261	19	248	435	128	1,171	113	340	500	975	4 745
State of Alabama Class I Railroads	Miles of Road Operated 1936 1937			5.105	1	N 4	4	-	4.4	9		. 37,							-					4.762
	Miles of		315	5, 10	1.927	4.067	4.94	1,130	4.308	6,732	133	207.10		261	154	578	457	128	1.172	. 113	242	025	133	4.770
i.															. 1				***********					
	Road				************						•													Total
1101. 2002			ABAC	ACL	C W C	III. Cent.	N S S S S S S S S S S S S S S S S S S S	St. L& SF.	SAL	W Ry of Al	Total		0 C V	A RAC	ACL	C of Ga.	G M & O.	L.A. N	N C & St L	St. L. & SF	SAL	Sou	W Ry. of Ala.	Total

Alabama Great Southern.  Alabama Alabama & Osto.  Alabama Great Southern.  Alabama Great Great Southern.  Alabama Great Great Southern.  Alabama Great Grea	Enure Line	Apportio	Apportioned to Alabama
315 \$1,327 \$418,037 \$261 \$1,327 \$346, \$1,527 \$363 \$639 \$363, \$154 \$248 \$606 \$1,595,144 \$248 \$606 \$1,595,174 \$45,174 \$418 \$1,595,174 \$1,595,174 \$1,595 \$1,171 \$1,227 \$1,435 \$1,171 \$1,277 \$1,435 \$1,171 \$1,171 \$1,277 \$1,435 \$1,171 \$1,171 \$1,277 \$1,435 \$1,171 \$1,137 \$1,143 \$1,171 \$1,145 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,171 \$1,143 \$1,144	Per Mile	Miles	Mile 7
606     3 081 144     248     606     150       1 879     849     1 595,474     568     849     482       2 036     849     1 107,461     431     544     107,461       4 853     843     4 107,461     431     544     107,461       4 853     843     4 107,461     431     843     107,41       1 113     823     1,71     1,227     1,436       1 116     4,835     6,04     113     674     76       1 83     928     4,845,723     341     928     316       1 84     843     6,40     606     619     669     146       1 83     654     86,932     133     654     86	\$1,327 \$418,	037 0 261	393
1, 879 849 1, 595, 474 508 549 244 224 224 224 224 224 224 224 224 2	606 3,081,	14.	
4,963     843     4,174,344     128     843       4,892     1,227     6,001,588     1,171     1,227     1,436       4,892     1,227     6,001,588     1,171     1,227     1,436       4,835     928     4,485,723     341     928     316,436       4,312     699     3,643,904     209     699     146,640       6,640     606     4,024,371     1,023     606     619,619       133     654     86,932     133     654     86	544 1,107,	474	,
752,640 113 674 775 752,640 113 674 776 776 776 776 776 776 776 776 776	843 4,174	588	1
4,312 699 3,013,904 209 699 146, 6,640 606 4,024,371 1,023 606 619, 133 654 86,932 133 654 86	674 752	640	
6,640 006 4,024,371 1,023 654 86,932 133 654 86	699 3,613	306	
	654 86	932	

Revenues, Expenses and Net Income, Kailways of Class I—Years 1921–1941  Total Operating Taxes General Operating Taxes (Therenues 684, 224, 389 (30, 058, 104, 387, 949, 317, 384, 389, 317, 384, 389, 317, 384, 389, 317, 384, 389, 317, 384, 389, 317, 384, 386, 381, 382, 388, 383, 383, 383, 383, 383, 383	Railways of Class I—Years 1921 (ailways of Class I—Years 1921
	Investment in Railway property used in transportation service a \$2,544,543,695 2,544,543,695 2,544,543,695 2,544,543,695 2,544,543,695 2,544,543,695 3,284,043,377 2,930,626,741 2,329,527,033 3,292,527,033 3,292,527,033 3,292,527,033 3,245,727,101 3,245,727,101 3,245,727,101 3,245,727,101 3,245,727,101 3,245,727,101 3,245,727,101 3,245,727,101 3,245,727,101 3,244,359,965 3,142,336,647 3,143,336,647 3,143,336,647 3,143,336,442 3,147,477,770

	25.8£83.89.59.83.8 25.8£83.89.59.83.8 25.8£83.89.59.83.8
	- 54-4444644-44
	Net Operating Raiway Income 81, 588 738 d 297, 937 2, 747 314 18, 759 485 17, 413 513 2, 280 384 12, 068, 473 5, 658 915 21, 774, 961 21, 774, 961
, Inclusive	Investment in Rail- way Property Used in Transportation Service, including. Cash and Materials and Supplies \$36, 316, 487 23, 252, 435 285, 220, 330 104, 444, 459 102, 912, 783 585, 640, 173 467, 330, 842 98, 812, 870 423, 906, 779 284, 315, 781 610, 833, 995 9, 688, 652
State of Alabama Class I Railroads Average Annual Rate of Return—1921-41, Inclusive	
State of Class I	Alabama Great Southern.  Atlanta, Birmingham & Coast. Atlanta Georgia Atlantic Const. Atlantic Const. Atlantic Const. Atlantic Const. Atlantic Mobile and Obio Illinois Central Louisville & Nashville. Icouisville & Nashville. Nashville & Louis-San Francisco Seaboard Air Line. Southern Western Ry. of Alabama  d.—denotes deficit. Source: Association of American Railroads—Bureau of Railway Economies.
Avera	Road Railroads—Burea
	Alabama Great Southern Atlanta, Birmingham & Coast Atlantic Coset Line Central Georgia Gulf, Mobile and Obio Illinois Central Louisville & Nashville Nashville, Chatta. & St. Louis Seaboard Air Line Southern Western Ry, of Alabama d—denotes deficit. <sup>3</sup> Source: Association of American I
	Alabama Great Sor Atlanta, Birmingh Atlanta, Birmingh Atlantic Cost Lin Central Georgia Gulf, Mobile and Gulf, Illinois Central Louisville & Nashv Nashville, Chatta. St. Louis-San Fran Seaboard Air Line Southern Western Ry. of Ala d—denotes deficit.

In State of Alabama Weighted in Proportion to Miles of Road Operated at Close of Year 1941 Average Rates of Return, 1921-41 Entire Line Class I Railroads State of Alabama Road Atlanta, Bgham, & Coast Atlantic Coast Line Central of Georgia, Gulf, Mobile & Ohio Illinois Central Louisville & Nashville Nashville, Chatta, & St. L. St. Louis-San Francisco Alabama Great Southern Western Ry. of Alabama Weighted Seaboard Air Line ... denotes deficit [fol. 2066] Southern.

	In State of Mahama	Ratio Weighted 105 27,405 113 21,406 113 28,024 115 60,145 1114 46,056 1118 14,336 117 118 12,389 111 118 22,289 111 118 22,289 111 118 22,289 111 118 22,289 111 118 22,289
•		Atted Miles 251 251 251 251 251 251 251 251 251 251
bams liroads Revenue Need 921-41, Inchasive)	Weighted in Proportion to Miles of Road Operated of Close of Year 1941	Ratio Weighted 105 33.075 139 88.821 113 88.821 113 506.130 114 524.466 112 554.512 118 562.386 111 723.609 111 12 12.857 111 723.609 111 14.630
State of Alabama Class I Railroads Fact and Extent of Revenue Need	ortion to Miles of Ro	Mile 288 288 5,010 1,816 1,866 1,969 1,111
	Weighted in Propo	
	Ag.	Alabama Great Sou. Atlanta, Bgham. & Coast. Atlantic Coast Line Countral of Georgia Louisville & Ohio Illinois Central Louisville & Nashville. Nashville, Chatta. & St. L. Southern West. Ry. of Alabama.

	8 5.063 5.243 5.243 5.601 5.871 7.85 7.785 8.455 611	
	Basis B 34, 321 34, 321 139, 228 107, 070 107, 070 110, 382 110, 382 110, 382 126, 715 1276, 715 135, 928 135, 928 135, 928	\$3.336.300
940 Camiral Ouries	Basis A 28, 769, 500, 26, 685, 351, 285, 412, 048 118, 631, 649, 82, 643, 6, 322, 945, 606, 257, 218 322, 945, 606, 257, 777, 073 545, 268, 555, 545, 268, 555, 541, 288, 555, 541, 288, 555, 541, 288, 555, 541, 288, 555,	979.857.084
us of January 1, 1	Working Capital \$230,100 3,542,800 979,500 2,085,700 5,643,700 8,377,500 1,662,800 4,1132,500 4,1132,500 5,732,800	\$36,588,200.\$2,
State of Alabama Class 1 Railroads  iy Common Carrier Service as of January Basis B  Current Appraisal	Lands 43,196,083 20,075,966 20,864,432 11,127,123 4,573,433 73,060,187 25,805,045 11,848,679 20,082,138 15,905,922 46,116,614	\$235,618,515
State of Alabama Class 4 Railroads Used in Common Carr Basis B	Reproduction Estimate 836,599,880 31,906,776 303,319,011 127,121,978 100,411,738 622,217,409 569,677,300 96,877,310 331,703,737 257,154,989 575,154,989	\$3.064,093,902 113
alue of Property Basis A	Production Cost	52, 707, 650, 369 100
Elements of	oast.	Ex Parte No. 148
	Road south ham. & Cuth ham. & Cuth ham. & Cuth her harth. & Chio. Nashville hatth. & Shabama.	bit A-11,
(fol. 2068)	Road Alabama Great Southern Atlantia, Birham, & Coast Central of Georgia Gulf, Mobile & Ohio III. Cent. Co. Iouisville & Nashville St. Louis-San Francisco Seaboard Air Line Southern Ry. West. Ry. of Alabama	Ratio Source: Exhibit A-1f, Ex Parte

### Docket No. 4—Witness: Beight Southern Railway Company

Southern Railway Comp	any .		
Eight Months Ended Aug. 31, 1941 a	nd 1942, Respe	ectively.	
		1	
	1941	1942	
Total Operating Revenues	\$88 450 213	\$126,437,425	
Total Operating Revenues	55 496' 901		
Total Operating Expenses Total Railway Tax Accruals	-10,005,001	73,907,098	-
Total Railway Tax Accruals	10,085,242	22,489,579	
Net Operating Rents Payable or Receivable	2,123,371	1,962,957	. 0 .
Net Railway Operating Income	20,754,799	28,077,791.	
Operating Ratio, excluding Taxes and Rents	62.73	58.45	
Operating Ratio, including Taxes and Rents	76.54		
		4	
Selected Passenger Revenue and T	raffic Statistics		
Seven Months Ended July 31, 1941 a	nd 1942		
incom to the second second	0	4.	
(102) Passenger Revenue			
Coaches (other than Commutation)	<b>\$</b> 3,373,784.	7,382,826	7 4
Parlor & Sleeping Cats	4,116,778	8,830,635	
Number of Revenue Passengers Carried	-		
In Coaches (other than Commutation)	2,375,810	3,995,695	
In Parlor and Sleeping Cars		885,751	
Revenue Passengers Carried One Mile			
In Complete (other than Commutation)	230 145 421	520,527,913	
In Coaches (other than Commutation) In Parlor and Sleeping Cars	174 790 490	322,861,841	
In Parlor and Sleeping Cars	174,729,420	322,801,841	
Revenue per Passenger Mile (Cents)			
In Coaches (other than Commutation)	1.411	1.418	
In Parlor and Sleeping Cars	2.356	2.735	
Passenger Train Miles	6,508,087	6,893,852	- 2
Passanger Coach Miles	12,095,750		
Passenger Coach Miles Sleeping and Parlor Car Miles	13,166,246	16,110,987	
Deeping and Parior Car Miles	10, 100, 230	10,110,001	
Revenue (other than Commutation) per Coach		47 71	
Mile (Cents) Passenger Miles per Coach Mile	27.89	47.71	
Passenger Miles per Coach Mile. Revenue per Sleeping & Parlor Car Mile. Passenger Miles per Sleep. & Parlor Car Mile.	.19.77	33.64	
Revenue per Sleeping & Parlor Car Mile	31.27	, 54.81	
Passenger Miles per Sleep, & Parlor Car Mile.	13.27	20.04	1
Coach Miles per Train Mile	1.86	20.04	
Sleeping & Parlor Car Miles per Train Mile		2:34	
Adjusted in a sendones with present law	. 2.02	2.01	
* Adjusted in accordance with present law.			
[fol. 2070]	and Cimmon		
The Alabama Great Southern Rail			
Eight Months Ended Aug. 31, 1941 and	1 1942, Respect	uvely	. ,
	1941	1942	/
	1041		
Total Operating Revenues	\$6,878,935	\$12,214,099.	
Total Operating Expenses		6.303.953	
Total Operating Expenses		The second second second	0
Total Railway Tax Accruals	1,032,567		
Net Operating Rents Payable or Receivable Net Railway Operating Income	9,565	458,565	
Net Railway Operating Income	\$1,501,461	\$1,180,371	-
Operating Ratio, excluding Taxes and Rents	63.02	51.61	
*Operating Ratio, including Taxes and Rents	78.17	90.34	
Selected Passenger Revenue and T	raffic Statistic		1
Seven Months Ended July 31, 19	941 and 1942		1.70
		1	
(102) Passenger Revenue	4		
Coaches (Other than commutation).	\$294,767	** \$595,614	
Parlor and Sleeping Cars	387,027	772,717	
Number of Revenue Passengers Carried,			
In Coaches (other than Commutation)	200 086	316,268	
In Dealer and Cleaning Commutation)	90,199	188,470	
In Parlor and Sleeping Cars		100,110	
Revenue Passengers Carried One Mile	. 1		1 10

	1002			* 4	
	In Coaches (other than commutation)	23	, 176, 352	46	801,193
	In Parlor and Sleeping Cars	18	,360,077	34	855.423
	Revenue per Passenger Mile (cents)		Charles		
	In Coaches (other than commutation)		1.372		1.273
	In Parlor and Sleeping Cars		2.108	100	2.217
	Passenger Train Miles Passenger Coach Miles	12 1	521,896 $177,814$	0 1	558,772 386,708
	Sleeping and Parlor Car Miles	1	,152,911	1	405,981
	Revenue (other than Commutation) per Cos	ach .	,102,011		100,001
	Mile (Cents)		25.03		42.95
	Passenger Miles per Coach Mile		19.68		33.75
	Revenue per Sleeping and Parlor Car Mile	e			
	(Cents)	. , .	. 33.57		54.96
	Passenger Miles per Sleep. & Parlor Car Mile.		15.92		24.79
	Coach Miles per Train Mile		2.26		2.48
	Sleeping and Parlor Car Miles per Train Mile.	68%	2.21		2 52
	* Adjusted in accordance with present law. [fol. 2071]		10		
	Atlantic Coast Line Railro	nd Con	nnany		
	and the same of th		*	dina	
-	Selected Passenger Statistics for E		onths, Ea	ding	
	August 31, 1942 and	1 1944			
		194	2	194	11
	1. Total operating expenses	\$70,33	5,197	\$44,8	7,546
	. 2: Total operating expenses		7,397		10,850
	3. Total railway tax accruals		5,000		25,000
	4. Net operating Rents-Payable or Re-		/		-
	ceivable		4,228-D		09,653-D
	5. Net railway operating income		8,571	8,3	72,043
	6. Operating ratio, excluding taxes and rents 7. Operating ratio, including taxes and rents		58.10 80.40	4	66.96 81.32
	Selected Passenger Revenue and	d Traffi	e Statisti	na .	01.02
	8. Passenger reviewe:	u Liam	Cotation		
*	(a) Coaches	\$7,37	9.983	\$4.39	93,796
	(a) Coaches (b) Parlor and sleeping		1,192		59,607
	9. Number of revenue passengers carried:				
	(a) In coaches		0,411		52,213
_	(b) In parlor and sleeping cars	78	3,088	40	02,585
	10. Revenue passengers carried one-mile:	PEE 4 00	4	#200 F	20 400
	(a) In coaches (b) In parlor and sleeping cars	304 73		\$320,56	
	11. Passenger-train miles	304,73	9,014		55,535 00,565
	12. Passenger-coach miles.		3,016	13:70	01,360
	13. Sleeping and parlor car miles		5,746		2,928
	14. Revenue per coach-mile—cents		42.58		32.07
1	15. Passenger-miles per coach mile		32:00		23.40
-	16. Revenue per sleeping and parlor car mile		39.74		25.51
	17. Passenger-miles per sleeping and parlor		10.10		10 10
٠	car mile		16.10		10.43
	19. Sleeping and parlor car miles per train	· 1	2.93		2.54
3	mile.	150	3.20 .		2.95
		- Silverine	3.20	. \	2.90
	[fol. 2072]				
	Seaboard Air Line Railwa	y Com	pany		
	Selected Passenger Statistics for E	ight M	onths, Er	ding	
	August 31, 1942 and	d 1941	,		
			1942		1941
	1. Total operating revenues	\$6	7,507,29	1 \$41	492,630
2	2. Total operating expenses	4	1,305,14		838,391
	3. Total Railway Tax accruals	vie .	3,300,00	0 2,	585,000
	4. Net operating/Rents—Payable or Receivab	ole	2,518,08		224,030
	5. Net railway operating income.	2	0,384,07	-	845,216
	6. Operating ratio, excluding taxes and rents. 7. Operating ratio, including taxes and rents.		61.1		74.32
	operating ratio, including taxes and rents.		69.8	U	83.50

#### Selected Passenger Revenue and Traffic Statistics

.8	Passenger revenue:		1	
. 0.	(a) Coaches	\$5,897,720	\$3,571,416	
	(b) Parlor and sleeping		3,268,043	
.9.	Number of revenue passengers carried:			
. 45	(a) In coaches	1,367,698	911,711	
	(b) In parlor and sleeping cars	572,402	268,814	
10.	Revenue passengers carried one mile:			
	(a) In coaches	400,171,861	256,447,176	
	(b) In parlor and sleeping cars	260,386,354	127,492,379	
	Passenger-train miles		4,366,129	ď.
12.	Passenger-coach miles	13,493,675	11,398,836	
	Sleeping and parlor car miles		10,898,695	
	Revenue per coach-mile—cents	43.71	31.33	
	Passenger-miles per coach mile	29.66	22.50	
	Revenue per sleeping and parlor car mile	50.65	29.99	
17.	Passenger-miles per sleeping and parlor car			
	mile		11.70	
	Coach-miles per train mile	2.94	2.61	
	Sleeping and parlor car miles per train mile	3.09	2.50	
[101]	. 2073]	omponit		
	Central of Georgia Railway.C	ompany		
	Eight Months Ended August 31, 1941 and	t 1942. Respec	tively	

. 1941	1942
Total Operating Revenues \$14,172,387	\$17,849,267
Total Operating Expenses	12,268,439
Total Railway Tax Aceruals	1,579,499
Net Operating Rents Payable or Receivable 209,228	147,526
Net Railway Operating Income	3.853.803
Operating Ratio, excluding Taxes and Rents 72.42	68.73
*Operating Ratio, including Taxes and Rents 81.40	-78.41

#### Selected Passenger Revenue and Traffic Statistics Eight Months Ended August 31, 1941 and 1942

Eight Months Ended August 81, 13	at and 1012		
(100) P		** *	
(102) Passenger Revenue	* *co* of	#1 100 00S	
Coaches (other than Commutation)	\$827,054	\$1,489,295	
Parlor and Sleeping Cars	517,718	1,069,276	
Parlor and Sleeping Cars			
In Coaches (other than Commutation)	671,125	1,016,479	
In Parlor and Sleeping Cars	144:135	.249,996	
Revenue Passengers Carried One Mile			
In Coaches (other than Commutation)	58.014.445	94,979,092	
In Parlor and Sleeping Cars	25, 266, 877	48, 163, 663	
Revenue per Passenger Mile (Cents)	2012001311		
In Coaches (other than Commutation)	1:425	1.568	
	2.049	2.220	
In Parlor and Sleeping Cars		1,652,146	
Passenger Train Miles	1,557,428		
Passenger Coach Miles	3,296,733	4,197,295	
Sleeping and Parlor Car Miles.	2,619,223	=3,177,650	
Revenue (other than Commutation) per Coach			
Mile (Cents)	. 25.09	35.49	
Passenger Miles per Coach Mile	17.60	22.63	
Revenue per Sleeping and Parlor Car Mile (cents).	19.77.	33.65	•
Passenger Miles per Sleeping and Parlor Car Mile.			
Coach Miles per Train Mile.	4		
	1.68		
Sleeping and Parlor Car Miles per Train Mile	1.00	1.00	
* Adjusted in accordance with present law.			

[fol. 2074]

EXHIBIT No. 23 ICC Docket 2896

Ехнівіт №. 5

Witness: Beight

#### Southern Railway Company

### Eight Months Ended August 31, 1942

1. Railway Operating Revenues	Total \$126,437,425	Freight \$101,002,770	Passenger \$25,434,655
Railway Operating Expenses     Railway Tax Accruals other than Income and Federal	\$73,907,098	\$57,430,581	\$16,476,517
Capital Stock Tax4. Net Rents Payable	6,254,705 1,962,957	4,859,355 1,808,628	1,395,350 154,329
<ul><li>5. Outgo at this point.</li><li>6. Net Railway Operating Income</li></ul>	\$82,124,760	\$64,098,564	\$18,026,196
at this Point	\$44,312,665 100%	\$36,904,206 83%	\$7,408,459 17%
Federal Capital Stock Tax	16,234,874	13,474,945	2,759,929
<ol> <li>Total Railway Operating Outgo</li> <li>Net Railway Operating Income</li> <li>Net Railway Operating Deficit</li> </ol>	\$98,359,634 \$28,077,791	\$77,573,509 \$23,429,261	\$20,786,125 \$4,648,530
from Passenger— .	1936 1937	\$3,898,261 .4,121,888	
•	1938 1939 1940	4,928,905 4,808,631 5,222,582	
	1941	927,503	\$23,907,770
12. Net for 6-2/3 years. 13. Investment in Railway Proper	rty Used in J	ransportation [ ]	\$19,259,240
Service (ICC AR Sch. 211N) 14. (708) Cash 15. (716) Material and Supplies			\$611,678,846 16,640,484 8,796,645
<ul> <li>16. Total as of December 31, 1941</li> <li>17. Return for One Year @ 5-3/4%</li> <li>18. Return for Eight Months</li> <li>19. Ratio Return to Revenues</li> </ul>			\$637,115,975 36,634,169 24,422,780 10%
20. Passenger Service. 21. First eight months of 1942. 22. Allowance for return on Investme	nent.	\$25,434,655 81%	
<ul> <li>23. Passenger revenue less return</li> <li>24. Net Railway Operating Outgo-P</li> <li>25. Net Deficit from Passenger Oper</li> </ul>	assenger:	20,602,071 20,786,125 184,054	
[fol. 2075] The Alabama Great S	Southern Railre	oad Company	
Eight Months I	. 0		

#### Eight Months Ended August 31, 1942

		Total	Freight	Passenger
1,	Railway Operating Revenue	\$12,214,099	. \$10,059,592	\$2,154,507
2.	Railway Operating Expenses	6,303,953	5,027,442	\$1,276,511

Railway Tax Accruals other			
than Income and Federal			
Capital Stock Tax	585,917	467,269	118,648
Net Rents Payable	458,565	270,192	188,373
Outgo at this point	\$7,348,435.	\$5,764,903	\$1,583,532
Net Railway Operating Income			
at this point	4,865,664	4,294.689	570,975
Percent	100.00	88.27	11:73
Federal & State Income and Federal Capital Stock Tax	3,685,293	3,250,428	434,865
m . up il . O Out	\$11,033,728	\$9,015,331	\$2.018.397
Total Railway Operating Outgo Net Railway Operating Income.	1,180,371	1,044,261	136,110
Net Railway Operating Deficit	· *1096	\$448,904	
from Passenger-	1936		1
	1937	355,008	•
	1938	517,617	
•	19399	, 568,655	4
	1940	585,759	0' 200 000
	1941	32,693	2,508,636
2006 0000000000000000000000000000000000	t: Used in T		\$2,372,526
Net for 6-2/3 years	ter Used in T	ranepartation	
Investment in Railway Proper Service (ICC AR Sch. 211N).	ti. Used in 1	ransportation	\$39,029,428
Service (ICC AR Sch. 2FLN).	:		4,335,639
(708) Cash			363,174
(716) Material and Supplies			. 505,174
			\$43,728,241
Total as of December 31, 1941. Return for One Year @ 5-3/4%	**********		\$2,514,374
Return for One Year @ 5-3/4%		* * * * * * * * * * * * * * * * * * * *	
Return for Fight Months			1,676,333
Ratio Return to Revenues			14%
Passenger Service		Income	
First Eight Months of 1942		\$2,154,507	
Allowance for Return on Invest	ment	86%	1
Allowance for Return on Invest	ment		1.
Allowance for Return on Invest Passenger Revenue less Return.	ment	86% 1,852,876	1.
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-F	assenger	86%	
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-F	assenger	$\begin{array}{c} 86\% \\ 1,852,876 \\ 2,018,397 \end{array}$	
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-F Net Deficit from Passenger Oper	assenger	1,852,876 2,018,397 \$165,521	
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-F Net Deficit from Passenger Oper [2076] Atlantic Coast	Passenger	86% 1,852,876 2,018,397 \$165,521	
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-F Net Deficit from Passenger Oper [2076] Atlantic Coast	assenger	86% 1,852,876 2,018,397 \$165,521	
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-F Net Deficit from Passenger Oper [2076] Atlantic Coast	Passenger	86% 1,852,876 2,018,397 \$165,521	Passenger
Allowance for Return on Invest Passenger Revenue less Return. Net Railway Operating Outgo-P Net Deficit from Passenger Oper [2076] Atlantic Coast Eight Months	ment Passenger rations Line Railway C ended August 3	86% 1,852,876 2,018,397 \$165,521 company	Passenger \$18,287,619
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-F Net Deficit from Passenger Oper 2076 Atlantic Coast Eight Months Railway operating revenues Railway operating expenses	ment Passenger rations Line Railway C ended August 3 Total \$70,335,196 40,867,397	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight.	
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-P Net Deficit from Passenger Oper  2076 Atlantic Coast Eight Months  Railway operating revenues Railway operating expenses Railway tax accruals other than	ment Cassenger rations Line Railway C ended August 3 Total \$70,335,196 40,867,397	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight, \$52,047,577	\$18,287,619
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-P Net Deficit from Passenger Ope  2076 Atlantic Coast Eight Months  Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital	ment Passenger rations Line Railway C ended August 3 Total \$70,335,196 40,867,397	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight, \$52,047,577 27,857,977	\$18,287,619 13,009,420
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-P Net Deficit from Passenger Oper  2076 Atlantic Coast Eight Months  Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital	ment	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight, \$52,047,577 27,857,977	\$18,287,619 13,009,420 1,169,752
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-P Net Deficit from Passenger Oper  2076 Atlantic Coast Eight Months  Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital  stock Tax.	ment	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight, \$52,047,577 27,857,977	\$18,287,619 13,009,420 1,169,752
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-P Net Deficit from Passenger Oper  2076 Atlantic Coast Eight Months  Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital stock Tax Net Rents Payable Outgo at this point	ment Cassenger rations Line Railway C ended August 3  Total \$70,335,196  40,867,397  3,675,000 2,124,228  \$46,666,625	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight, \$52,047,577 27,857,977	\$18,287,619 13,009,420 1,169,752 406,434
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-P Net Deficit from Passenger Oper  2076 Atlantic Coast Eight Months  Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital stock Tax Net Rents Payable Outgo at this point	ment Cassenger rations Line Railway C ended August 3  Total \$70,335,196  40,867,397  3,675,000 2,124,228  \$46,666,625	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight, \$52,047,577 27,857,977  2,505,248 1,717,794 \$32,081,019	\$18,287,619 13,009,420 1,169,752 406,434 \$14,585,606
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-P Net Deficit from Passenger Ope  2076 Atlantic Coast Eight Months  Railway operating expenses Railway operating expenses Railway tax accruals other than income and Federal Capital stock Tax Net Rents Payable  Outgo at this point Net railway operating income	ment	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight \$52,047,577 27,857,977 2,505,248 1,717,794 \$32,081,019 19,966,558	\$18,287,619 13,009,420 1,169,752 406,434 \$14,585,606 3,702,013
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-P Net Deficit from Passenger Oper  2076 Atlantic Coast Eight Months  Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax. Net Rents Payable  Outgo at this point Net railway operating income at this point	ment assenger rations.  Line Railway C ended August 3  Total \$70,335,196  40,867,397  3,675,000 2,124,228  \$46,666,625 23,668,571	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight \$52,047,577 27,857,977 2,505,248 1,717,794 \$32,081,019 19,966,558	\$18,287,619 13,009,420 1,169,752 406,434 \$14,585,606 3,702,013
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-F Net Deficit from Passenger Oper  2076 Atlantic Coast Eight Months  Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital stock Tax.  Net Rents Payable  Outgo at this point Net railway operating income at this point Percent	ment	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight, \$52,047,577 27,857,977  2,505,248 1,717,794 \$32,081,019	\$18,287,619 13,009,420 1,169,752 406,434 \$14,585,606 3,702,013 15,64%
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-F Net Deficit from Passenger Oper  2076 Atlantic Coast Eight Months  Railway operating expenses Railway tax accruals other than income and Federal Capital stock Tax. Net Rents Payable  Outgo at this point Net railway operating income at this point Percent	ment	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight \$52,047,577 27,857,977 2,505,248 1,717,794 \$32,081,019 19,966,558	\$18,287,619 13,009,420 1,169,752 406,434 \$14,585,606 3,702,013 15,64%
Allowance for Return on Invest Passenger Revenue less Return Net Railway Operating Outgo-F Net Deficit from Passenger Oper Legal Atlantic Coast Eight Months  Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable  Outgo at this point Net railway operating income at this point Percent Federal and State Income and Federal Capital Stock Tax	ment assenger rations.  Line Railway C ended August 3  Total \$70,335,196  40,867,397  3,675,000 2,124,228  \$46,666,625 23,668,571 100% 9,880,000	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight, \$52,047,577 27,857,977 2,505,248 1,717,794 \$32,081,019 19,966,558 84,36% 8,334,768	\$18,287,619 13,009,420 1,169,752 406,434 \$14,5\$5,606 3,702,013 15,64% 1,545,232
Eight Months  Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax  Net Rents Payable  Outgo at this point  Net railway operating income at this point  Percent  Federal and State Income and	ment assenger rations.  Line Railway C ended August 3  Total \$70,335,196  40,867,397  3,675,000 2,124,228  \$46,666,625 23,668,571 100% 9,880,000	86% 1,852,876 2,018,397 \$165,521 company 1, 1942 Freight, \$52,047,577 27,857,977 2,505,248 1,717,794 \$32,081,019 19,966,558 84,36% 8,334,768	\$18,287,619 13,009,420 1,169,752 406,434

10.				
	Net railway operating income. Net railway operating deficit	\$13,788,571	\$11,631,790	\$2,156,781
	from passenger-	1936	\$2,790,052	
		1937	2,492,414	
		1938	3,518,586	4.
		1939	4,291,109	
		1940	4,194,042	
				010 400 Dee
		1941	1,200,663	\$18,486,866
12.	Net for 6-2/3 years			\$16,330,085
	Investment in railway proper	to should be		
10.	investment in ranway proper	ty used in	transportation	******************************
	service (I.C.C. Sch. 211N)			\$288,575,404
14.	Cash			12,044,923
	Material and Supplies			6,148,886
16.	Total (as of December 31, 1941).			\$306,769,213
17.	Return for one year @ 5-3/4%			17,639,230
18.	Return for eight months at 5-3/4	%		11,759,436
19	Revenues for first eight months of	of 1942		70,335,196
20	Ratio of return thereto			16.7%
	Passenger service.			10.1/6
90	First eight months of 1942			
24	Allege eight months of 1942		\$18,287,619	1
23.	Allowance for return on investme	ent	83.3%	1
24	Passenger revenue less return		\$15,233,587	
25	Net railway operating outgo—pa	ssonger .	16, 130, 838	
20.	Net iniway operating odigo pa	asenger	10,100,000	
26.	Net deficit from passenger opera	tions	\$897,251	
[fol	2077]			*
[fol	Seaboa	rd Air Line Ra	ilway	
[fol	Seaboa	rd Air Line Ra		
[fol	Seaboa Eight Months e			
[fol	Seaboa	ended August 3	31, 1942	Passenger
	Seaboa Eight Months e	ended August 3 Total	11, 1942 Freight	Passenger
	Seaboa	ended August 3 Total	31, 1942	Passenger \$19,102,877
1.	Seaboa Eight Months e Railway operating revenues	Total \$67,507,291	Freight /\$48,404,414	\$19,102,877
1. 2.	Seaboa Eight Months e Railway operating revenues Railway operating expenses	ended August 3 Total	11, 1942 Freight	\$19,102,877
1. 2.	Seaboa Eight Months e Railway operating revenues Railway operating expenses Railway tax accruals other than	Total \$67,507,291	Freight /\$48,404,414	\$19,102,877
1. 2.	Railway operating revenues.  Railway operating expenses.  Railway tax accruals other than income and Federal Capital	Total \$67,507,291 41,305,140	Freight /\$48,404,414 29,340,636	\$19,102,877 11,964,504
1. 2. 3.	Railway operating revenues.  Railway operating expenses.  Railway tax accruals other than income and Federal Capital Stock Tax.	Total \$67,507,291 41,305,140 3,300,000	Freight /\$48,404,414 29,340,636 2,344,122	\$19,102,877 11,964,504 955,878
1. 2. 3.	Railway operating revenues.  Railway operating expenses.  Railway tax accruals other than income and Federal Capital	Total \$67,507,291 41,305,140	Freight /\$48,404,414 29,340,636	\$19,102,877 11,964,504
1. 2. 3.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable	Total \$67,507,291 41,305,140 3,300,000 2,518,080	Freight /\$48,404,414 29,340,636 2,344,122 2,121,320	\$19,102,877 11,964,504 955,878 396,760
1. 2. 3. 4. 5.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable Outgo at this point	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220	Freight /\$48,404,414 29,340,636 2,344,122	\$19,102,877 11,964,504 955,878 396,760
1. 2. 3. 4. 5.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax. Net Rents Payable Outgo at this point. Net railway operating income at	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220	Freight /\$48,404,414 / 29,340,636 / 2,344,122 / 2,121,320   \$33,806,078	\$19, 102,877 11,964,504 955,878 396,760 \$13,317,142
1. 2. 3. 4. 5. 6.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable Outgo at this point Net railway operating income at this point.	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220	Freight /\$48,404,414 29,340,636 2,344,122 2,121,320	\$19, 102,877 11,964,504 955,878 396,760 \$13,317,142
1. 2. 3. 4. 5. 6.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable Outgo at this point Net railway operating income at this point. Percent	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220	Freight /\$48,404,414 / 29,340,636 / 2,344,122 / 2,121,320   \$33,806,078	\$19, 102,877 11,964,504 955,878 396,760 \$13,317,142
1. 2. 3. 4. 5. 6.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax. Net Rents Payable. Outgo at this point. Net railway operating income at this point. Percent. Federal and State income and	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220	Freight /\$48,404,414 / 29,340,636 / 2,344,122 / 2,121,320   \$33,806,078	\$19, 102,877 11,964,504 955,878 396,760 \$13,317,142
1. 2. 3. 4. 5. 6.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable Outgo at this point Net railway operating income at this point. Percent	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220	Freight /\$48,404,414 / 29,340,636 / 2,344,122 / 2,121,320   \$33,806,078	\$19, 102,877 11,964,504 955,878 396,760 \$13,317,142
1. 2. 3. 4. 5. 6. 7. 8.	Railway operating revenues.  Railway operating expenses. Railway tax accruals other than income and Federal Capital Stock Tax.  Net Rents Payable.  Outgo at this point.  Net railway operating income at this point.  Percent.  Federal and State income and Federal Capital Stock Tax.	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071	Freight /\$48,404,414 /29,340,636 /2,344,122 /2,121,320 /\$33,806,078 /14,598,336	\$19,102,877 11,964,504 955,878 396,760 \$13,317,142 5,785,735
1. 2. 3. 4. 5. 6. 7. 8.	Railway operating revenues.  Railway operating expenses. Railway tax accruals other than income and Federal Capital Stock Tax.  Net Rents Payable.  Outgo at this point.  Net railway operating income at this point.  Percent.  Federal and State income and Federal Capital Stock Tax.  Total railway operating outgo.	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071	Freight /\$48,404,414 / 29,340,636 / 2,344,122 / 2,121,320 / \$33,806,078 / 14,598,336 / 33,806,078	\$19, 102, 877 11, 964, 504 955, 878 396, 760 \$13, 317, 142 5, 785, 735
1. 2. 3. 4. 5. 6. 7. 8.	Railway operating revenues.  Railway operating expenses. Railway tax accruals other than income and Federal Capital Stock Tax.  Net Rents Payable.  Outgo at this point.  Net railway operating income at this point.  Percent.  Federal and State income and Federal Capital Stock Tax.	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071	Freight /\$48,404,414 /29,340,636 /2,344,122 /2,121,320 /\$33,806,078 /14,598,336	\$19,102,877 11,964,504 955,878 396,760 \$13,317,142 5,785,735
1. 2. 3. 4. 5. 6. 7. 8.	Railway operating revenues.  Railway operating expenses. Railway tax accruals other than income and Federal Capital Stock Tax.  Net Rents Payable.  Outgo at this point.  Net railway operating income at this point.  Percent.  Federal and State income and Federal Capital Stock Tax.  Total railway operating outgo.	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071	Freight /\$48,404,414 / 29,340,636 / 2,344,122 / 2,121,320 / \$33,806,078 / 14,598,336 / 33,806,078	\$19, 102, 877 11, 964, 504 955, 878 396, 760 \$13, 317, 142 5, 785, 735
1. 2. 3. 4. 5. 6. 7. 8.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable. Outgo at this point Net railway operating income at this point Percent. Federal and State income and Federal Capital Stock Tax Total railway operating outgo Net railway operating income Net railway operating deficit	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071	Freight /\$48,404,414 29,340,636 2,344,122 2,121,320 \$33,806,078 14,598,336  \$34,598,336	\$19, 102, 877 11, 964, 504 955, 878 396, 760 \$13, 317, 142 5, 785, 735
1. 2. 3. 4. 5. 6. 7. 8.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable. Outgo at this point Net railway operating income at this point. Percent. Federal and State income and Federal Capital Stock Tax. Total railway operating outgo. Net railway operating income.	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071 \$47,123,220 \$20,384,071 1936	Freight /\$48,404,414	\$19, 102, 877 11, 964, 504 955, 878 396, 760 \$13, 317, 142 5, 785, 735
1. 2. 3. 4. 5. 6. 7. 8.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable. Outgo at this point Net railway operating income at this point Percent. Federal and State income and Federal Capital Stock Tax Total railway operating outgo Net railway operating income Net railway operating deficit	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071 \$47,123,220 \$20,384,071	Freight /\$48,404,414 /29,340,636 /2,344,122 /2,121,320 /\$33,806,078 /14,598,336 /\$33,806,078 /\$14,598,336 /\$33,806,078 /\$33,953,652 /\$3,207,798 /\$33,806,078 /\$33,806,078 /\$33,806,078 /\$33,806,078 /\$33,806,078 /\$33,806,078 /\$33,806,078 /\$33,806,078 /\$33,953,652 /\$3,207,798 /\$33,806,078 /\$33,	\$19, 102, 877 11, 964, 504 955, 878 396, 760 \$13, 317, 142 5, 785, 735
1. 2. 3. 4. 5. 6. 7. 8.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable. Outgo at this point Net railway operating income at this point Percent. Federal and State income and Federal Capital Stock Tax Total railway operating outgo Net railway operating income Net railway operating deficit	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071 \$47,123,220 \$20,384,071 1936 1937 1938	Freight  \$48,404,414  29,340,636  2,344,122 2,121,320  \$33,806,078  14,598,336  \$34,598,336  \$3,953,652 3,207,798 4,083,514	\$19, 102, 877 11, 964, 504 955, 878 396, 760 \$13, 317, 142 5, 785, 735 \$13, 317, 142 \$5, 785, 735
1. 2. 3. 4. 5. 6. 7. 8.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable. Outgo at this point Net railway operating income at this point Percent. Federal and State income and Federal Capital Stock Tax Total railway operating outgo Net railway operating income Net railway operating deficit	**Total **67,507,291** 41,305,140** 3,300,000** 2,518,080** \$47,123,220** 20,384,071** \$47,123,220** \$20,384,071** 1936** 1937** 1938** 1939**	\$1, 1942  Freight  \$48,404,414  29,340,636  2,344,122 2,121,320  \$33,806,078  14,598,336  \$31,953,652 3,207,798 4,083,514 2,997,095	\$19, 102, 877 11, 964, 504 955, 878 396, 760 \$13, 317, 142 5, 785, 735 \$13, 317, 142 \$5, 785, 735
1. 2. 3. 4. 5. 6. 7. 8.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable. Outgo at this point Net railway operating income at this point Percent. Federal and State income and Federal Capital Stock Tax Total railway operating outgo Net railway operating income Net railway operating deficit	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071 \$47,123,220 \$20,384,071 1936 1937 1938 1939 1940	\$1, 1942  Freight  \$48,404,414  29,340,636  2,344,122 2,121,320  \$33,806,078  14,598,336  \$33,806,078 \$14,598,336  \$3,953,652 3,207,798 4,083,514 2,997,095 2,807,430	\$19, 102,877 11,964,504 955,878 396,760 \$13,317,142 5,785,735 \$13,317,142 \$5,785,735
1. 2. 3. 4. 5. 6. 7. 8.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable. Outgo at this point Net railway operating income at this point Percent. Federal and State income and Federal Capital Stock Tax Total railway operating outgo Net railway operating income Net railway operating deficit	**Total **67,507,291** 41,305,140** 3,300,000** 2,518,080** \$47,123,220** 20,384,071** \$47,123,220** \$20,384,071** 1936** 1937** 1938** 1939**	\$1, 1942  Freight  \$48,404,414  29,340,636  2,344,122 2,121,320  \$33,806,078  14,598,336  \$31,953,652 3,207,798 4,083,514 2,997,095	\$19, 102, 877 11, 964, 504 955, 878 396, 760 \$13, 317, 142 5, 785, 735 \$13, 317, 142 \$5, 785, 735
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable Outgo at this point Net railway operating income at this point. Percent. Federal and State income and Federal Capital Stock Tax Total railway operating outgo. Net railway operating income. Net railway operating deficit from passenger—	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071 \$47,123,220 \$20,384,071 1936 1937 1938 1939 1940	\$1, 1942  Freight  \$48,404,414  29,340,636  2,344,122 2,121,320  \$33,806,078  14,598,336  \$33,806,078 \$14,598,336  \$3,953,652 3,207,798 4,083,514 2,997,095 2,807,430	\$19, 102, 877  11, 964, 504  955, 878 396, 760  \$13, 317, 142  5, 785, 735  \$13, 317, 142  \$5, 785, 735
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable Outgo at this point Net railway operating income at this point. Percent. Federal and State income and Federal Capital Stock Tax Total railway operating outgo. Net railway operating income. Net railway operating deficit from passenger—	**Total **67,507,291** 41,305,140** 3,300,000** 2,518,080** \$47,123,220** 20,384,071** \$47,123,220** \$20,384,071** 1936** 1937** 1938** 1939** 1940** 1941**	\$1, 1942  Freight  \$48,404,414  29,340,636  2,344,122 2,121,320  \$33,806,078  14,598,336  \$3,953,652 3,207,798 4,083,514 2,997,095 2,807,430 1,033,934	\$19, 102,877 11,964,504 955,878 396,760 \$13,317,142 5,785,735 \$13,317,142 \$5,785,735
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable. Outgo at this point Net railway operating income at this point Federal and State income and Federal Capital Stock Tax Total railway operating outgo Net railway operating income Net railway operating deficit from passenger—  Net for 6-2/3 years Investment in railway proper	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071 \$47,123,220 \$20,384,071 1936 1937 1938 1939 1940 1941 ty used in	\$1, 1942  Freight  \$48, 404, 414  29, 340, 636  2, 344, 122 2, 121, 320  \$33, 806, 078  14, 598, 336  \$34, 598, 336  \$3, 953, 652 3, 207, 798 4, 083, 514 2, 997, 095 2, 807, 430, 1, 033, 934	\$19, 102, 877  11, 964, 504  955, 878 396, 760  \$13, 317, 142  5, 785, 735  \$13, 317, 142  \$5, 785, 735
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable. Outgo at this point Net railway operating income at this point Federal and State income and Federal Capital Stock Tax Total railway operating outgo Net railway operating income Net railway operating deficit from passenger—  Net for 6-2/3 years Investment in railway proper	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071 \$47,123,220 \$20,384,071 1936 1937 1938 1939 1940 1941 ty used in	\$1, 1942  Freight  \$48, 404, 414  29, 340, 636  2, 344, 122 2, 121, 320  \$33, 806, 078  14, 598, 336  \$34, 598, 336  \$3, 953, 652 3, 207, 798 4, 083, 514 2, 997, 095 2, 807, 430, 1, 033, 934	\$19, 102, 877  11, 964, 504  955, 878 396, 760  \$13, 317, 142  5, 785, 735  \$13, 317, 142  \$5, 785, 735
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13.	Railway operating revenues.  Railway operating expenses. Railway tax accruals other than income and Federal Capital Stock Tax.  Net Rents Payable.  Outgo at this point.  Net railway operating income at this point.  Percent.  Federal and State income and Federal Capital Stock Tax.  Total railway operating outgo.  Net railway operating income.  Net railway operating income.  Net railway operating deficit from passenger—  Net for 6-2/3 years.  Investment in railway proper service (I.C.C. Sch. 211N).	Total \$67,507,291 41,305,140 3,300,000 2,518,080 \$47,123,220 20,384,071 \$47,123,220 \$20,384,071 1936 1937 1938 1939 1940 1941 ty used in	\$1, 1942  Freight  \$48, 404, 414  29, 340, 636  2, 344, 122 2, 121, 320  \$33, 806, 078  14, 598, 336  \$34, 598, 336  \$3, 953, 652 3, 207, 798 4, 083, 514 2, 997, 095 2, 807, 430, 1, 033, 934  transportation	\$19, 102, 877  11, 964, 504  955, 878 396, 760  \$13, 317, 142  5, 785, 735  \$13, 317, 142  \$5, 785, 735  \$12, 297, 688  \$321, 257, 522
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14.	Railway operating revenues Railway operating expenses Railway tax accruals other than income and Federal Capital Stock Tax Net Rents Payable. Outgo at this point Net railway operating income at this point Federal and State income and Federal Capital Stock Tax Total railway operating outgo Net railway operating income Net railway operating deficit from passenger—  Net for 6-2/3 years Investment in railway proper	**Total **67,507,291** 41,305,140** 3,300,000** 2,518,080** \$47,123,220** 20,384,071**  \$47,123,220** \$20,384,071** 1936** 1937** 1938** 1939** 1940** 1941** ty used in	\$1, 1942  Freight  \$48,404,414  29,340,636  2,344,122 2,121,320  \$33,806,078  14,598,336  \$3,806,078 \$14,598,336  \$3,953,652 3,207,798 4,083,514 2,997,095 2,807,430 1,033,934  transportation	\$19, 102, 877  11, 964, 504  955, 878 396, 760  \$13, 317, 142  5, 785, 735  \$13, 317, 142  \$5, 785, 735

mhoine					
	mil 1 4 i 4 D 1 1041)			2000 200 200	
16.	Total (as of December 31, 1941)		*****	\$333,730,536	
17.	Return for one year @ 5-3/4% Return for eight months at 5-3/4			19, 189, 506	
18.	Return for eight months at 5-3/4	%		12,793,004	
10	Revenues for first eight months of	of 1942		67,507,291	
	Ratio of return thereto			19.0%	
20.	Natio of feturi thefeto		Income	10.070	
21.	Passenger service		Income		
22.	First eight months of 1942		\$19,102,877		
23.	Allowance for return on investme	ent	- 81%		
			-		
94	Passenger revenue less return		\$15,473,330		
0"	Vat reference constitute outers	************			
. 25.	Net railway operating outgo-pa	ssenger	13,317,142		
26.	Net income from passenger opera	ations	\$2,156,188		
Ifol	. 2078]	*			
live	Louisville & Nash	ville Railmad	Company"		
	a Louisville & Ivasi	vine ramoau	Company		
	Eight Months	anded Arioust 3	1 1042		
	Eight Months e	nueu August a	1, 1512		
		Total	Freight .	Passenger	
		Total	Freight	rassenger	
	Deilman Operating Personner	#105 497 POS	egg esn seg	* 616 577 999	
1.	Railway Operating Revenues	\$100,427,890	\$88,850,563	\$16,577,332	
2.	Railway operating expenses	64,020,833	50,832,555	13,188,278	
	Railway tax accruals other than				
	Income and Federal Capital		1		
		d 994 065	4,960,013	1,324,052	
	Stock Tax	6,284,065			
4.	Net Rents Payable	1,286,917-	D 1,696,561	D 409,644	
				, .	
5.	Outgo at this point	\$69,017,981	\$54,096,007	\$14,921,974	
	Net railway operating income				
	at this point	36,409,914	34,754,556	1,655,358	
-					
	Percent	100%	95.45%	4.55%	
8.	Federal and State Income and			. X	
	Federal-Capital Stock Tax	23,027,940	21,980,169	1,047,771	ľ
				/4	1
. 9.	Total railway operating outgo	\$92 045 921	. \$76,076,176	\$15,969,745	
		\$13,381,974	\$12,774,387	\$607,587	
	Net railway operating income	410,001,314	\$12,114,001	6001,001	2
11.	Net railway operating deficit				
	from passenger-	1936	\$5,429,064		
		1937	5,887,764		
		1938	6,556,946		
	The state of the s	1939	6,404,436		-
	4				
		1940	6,815,661	00 000 202	
		1941	4,915,654	36,009,525	
		. /			
12.	Net for 6-2/3 years			<b>\$35,401,938</b>	
13.	Investment in railway proper service (I.C.C. AR. Sch. 211N	tv. used in	transportation		
	service (I C C AR Sch 211N	)	a	\$470,911;426	
14	Coch	1.5		34,863,525	
1.5	Cash				
15.	Material and Supplies			11,572,630	
- 4			1		
16.	Total (as of December 31, 1941)			\$517,347,581	
17.	Return for one year @ 5-3/4%.			.29,747,486	
18	Return for eight months @ 5-3/	40%		19,831,658	
10	Poweruse for first sight months	£ 1049		105 427 805	
90	Revenues for first eight months	01 1942		. 100, 121,000	
20.	Ratio of return thereto			18.8%	
21.	Passenger service		Income		
22.	First eight months of 1942		\$16,577,332		
23.	Allowance for return on investment	ent	81.2%		
	The state of the s	*			6
24	Passenger revenue less return		\$13,460,793	. /	F
95	Not be desired the second of the desired of the second of	*********			
44.	Net railway operating outgo-pa	ssenger	15,969,745		
00				*	
26.	Net deficit from passenger opera	tions	\$2,508,952		

Ехнівіт No. 24

[fol. 2079]

I. C. C. Docket 28963-Witness Beight

Southern Railway Company

Passenger Revenue—Hears 1937 to 1941, Incl. and First Seven Months of 1942 vs. First Seven Months of 1941  Passenger Revenue  (Excl. Commutation)  Passenger Corried  Pass. 1 Mile
enger Revenue—Hears 1937 to 1941, Incl. and First Seven Months of 1942 vs. First Sevenue.  * Passenger Revenue
enger Revenue—Hears 1937 to 1941, Incl. and First Seven Mong. Passenger Revenue (Excl. Commutation)
enger Revenue—Hears 1937 to 1941, Incl.  , Passenger Revenue , (Excl. Commutation)
enger Reyenue—Hea

Excl. Commutation) Total
19,338 \$10,409,
5, 138, 585 8, 778, 120 7
10,813 9,177,
70,919 14,232,
16,778 7,490,
30,635 16,213,
60, 106 5,055,
54
50 8,722,
00.
Intrastate Passenger Reven
Georgia Fla. Alaba
(220,448 \$321,990 -0- \$264,62
635 227,354 -0- 213,
232,356 -0- 192,
230, 100 -0- 191,
100 100 100 000
460. 961 177
200, 201,111 -0- 203,
512 51.090 -0- 58,
S. 21.83 -0 19
95 -0- 86.
. 15 69.40

D. Denotes Deepense.

D.-Denotes Decrease.

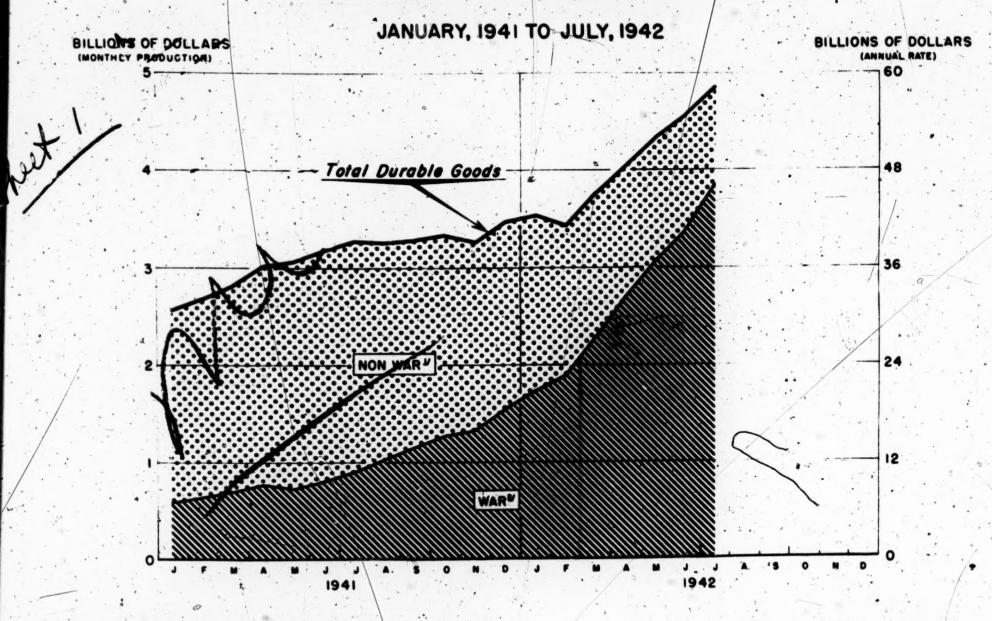
1128, 255 88, 860 83, 127 84, 557 50, 754 64, 141 4, 460 5, 27 13, 387 26, 38 Pullman 0242 0242 0246 0238 0211 0222 Revenue per Pass. 1, Mile Total 0143 0129 0127 0127 Coach Passenger Revenue-Years 1937 to 1941, Incl., and First Seven Months of 1942 vs. First Seven Months of 1941 Mississippi 13,009,684 11,413,247 10,729,631 12,093,032 28,187,173 18,360,077 34,855,423 Pullman Passengers Carried 1 Mile 1127,115 87,865 82,088 83,088 83,088 83,316 50,234 63,572 5,53 13,338 26,53 Alabama 732 507 385 718 608 352 193 Coach The Alabama Great Southern Railread Company. 29,934, 23,254, 28,351, 28,176, 46,801, ntrastate Passenger Revenues Georgia \$733,313 626,567 627,868 654,159 269,901 681,794 368,331 615,742 94,13 686,537 Passenger Revenue (excl. Commutation) \$305,173 276,567 284,064 284,064 288,067 606,275 387,027 772,717 772,717 110,40 385,690 5428, 140 350,000 361,000 361,000 663,626 294,767 595,614 297,624 300,847 102,06 nc, 7 Mos. 1942 v. 7 Mos. 1941 Inc. 7 Mos. 1942 v. 7 Mos. 1941 Percent. 7 Mos. 1941. 7 Mos. 1942. Inc. 1941 v. 1940. ne. 1941. v. 1940 7 Mos. 1941. 7 Mos. 1942. [fol. 2080] ercent ercent ercent

[fol. 2081]

		13
*		To
1		18
		nt
		Mo
		0
,		Ve
		S
		st
		E
		30
		2
		3
NO.		=
3		0
E		hs
೮		ont
2		Ň
2		9
3		.ve
~		Ŏ
ne		E
3	0	=
st	*	Pu
Ö		8
0		ne
Atlantic Coast Line Railroad Company		-
t a		=
<		15
		2
		37
		19
		2
		68
		7
		- 6
		Spi
		eve
0		2
		assenger Revenue—Years 1937 to 1941, Inc. and First Seven Months of 1942 vs. First Seven Months of 19
		eng
		N. P.
		100

					-1		1011
	Per 1 Mile	\$.0229 .0236 .0235	0258 0256 0275		\$914,036 712,326 653,536 671,202	782,812 441,211 639,575 111,610	198,364 44.96%
	Rev. Pass. 1	Coach	0139		\$22,430 17,084 14,137 14,306	<b>4848</b>	1,273
1942 vs. First Seven Months of 194	Carried	Pullman 118,219,973 111,087,518 128,179,130	129,842,085 183,785,109 127,492,379 200,386,354		Fla. \$534,609 448,832 432,442 458,838	546,652 321,406 458,692 87,814	137
f 1942 vs. First	Passengers Carried 1 Mile	Coach 684, 100 632, 917 809, 547	251 176 861		2. 2. 2. 2. 5. 5. 5. 5. 5. 5. 5. 5. 5. 5. 5. 5. 5.	/	7.
Seaboard Air Line Railway nc. and First Seven Months o		875 875	7,513,826 11,018,660 6,839,459 13,062,722 3,504,834	46. 65% 6, 223, 263 97. 40% senger Revenues	N. 1282 2	978 94,286 266 45,305 899 70,714	9,50
Seaboard Air to 1941, Inc. and First	Passenger Revenue (Exc'l. Commutation).	Pullman 2,701,640 2,627,219	3,022,680 1,739,591 3,268,043 7,165,002 1,716,911	3,896,959 149,24% Intrastate Pas	27 27 315 316 28 28 28 28	22.82.83 22.82.83 22.83.83	57% 57%
Year 1937 to 1941.	Passer (Exc'l.	-833	5, 491, 146 6, 279, 069 3, 571, 416 5, 897, 720	- CI - LO	S. 28. E.	8.8.8	808
Describer Barania-Ve		33.5	*	nc. 1941 over 1949. Percent. In. 7 Mos. 1942 over 7 Mos. 1941.		رم	Inc. 1941 over 1940. Percent. Inc. 7 Mos. 1942 over 7 Mos. 1941. Percent. D—Denotes Decrease.
[fol. 2082]	0.5	1937	1939 1940 1941 7 Mos. 1941	Percent Dec 1941 over 1 Percent Percent	1937	1940. 1941. 7 Mos. 1941. 7 Mos. 1942	Inc. 1941 over 1940 Percent Inc. 7 Mos. 1942 o Percent D—Denotes Decre

## PRODUCTION OF DURABLE GOODS FOR WAR AND NON-WAR PURPOSES



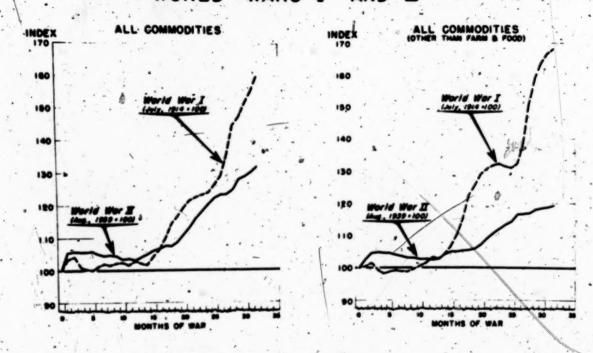
SOURCES Armaments, Merchant Ships, War Equipment: Statistics Division, War Production Board Construction: Bureau of Foreign and Domestic Commerce, Dept. of Commerce. Private Equipment, Consumers Durable Goods: Office of Price Administration.

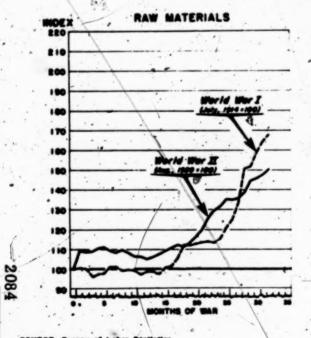
Won-war goods include private equipment, private and non-war governmental construction, and consumers durable goods, all on private account except non-war governmental construction.

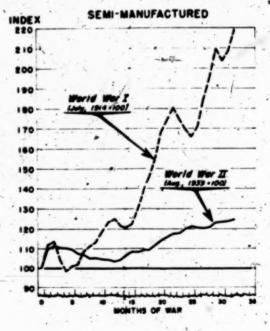
War goods include a maments, war equipment, merchant ships and war construction, all an government account.

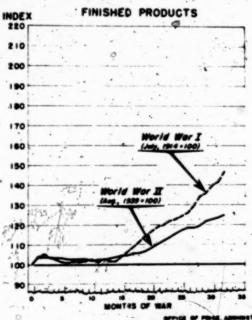
OFFICE OF PRICE ADMINISTRATION DIVISION OF RESEARCH

### MONTHLY WHOLESALE PRICES WORLD WARS I AND I



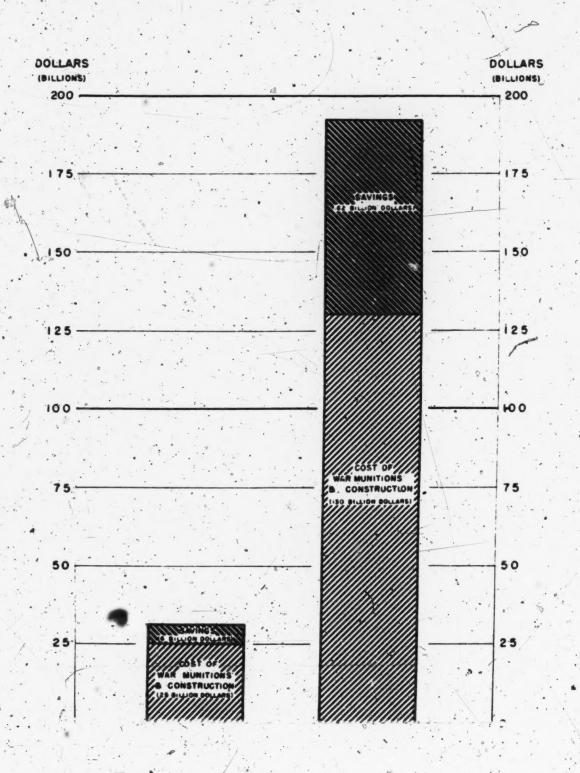


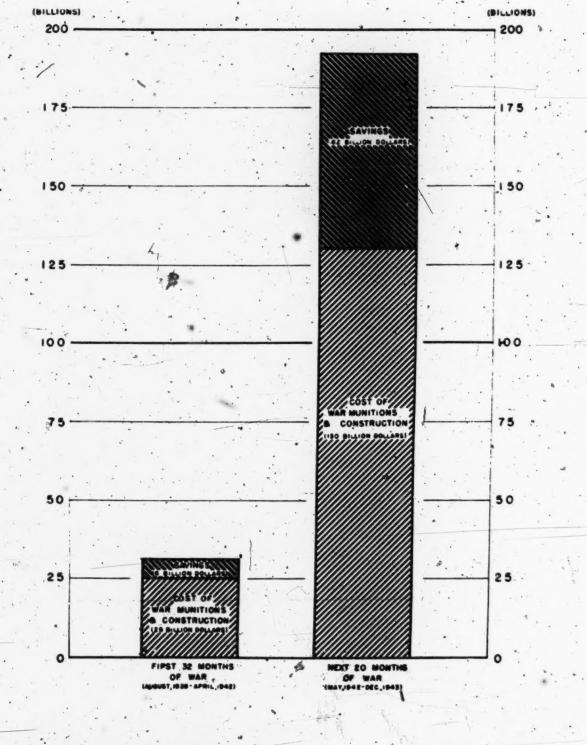




PRICE ANALYSIS AND REVIEW SHARES NO. 1193

## SAVINGS ON COST OF WAR PROGRAM BY AVOIDING WORLD WAR I PRICE RISE\*

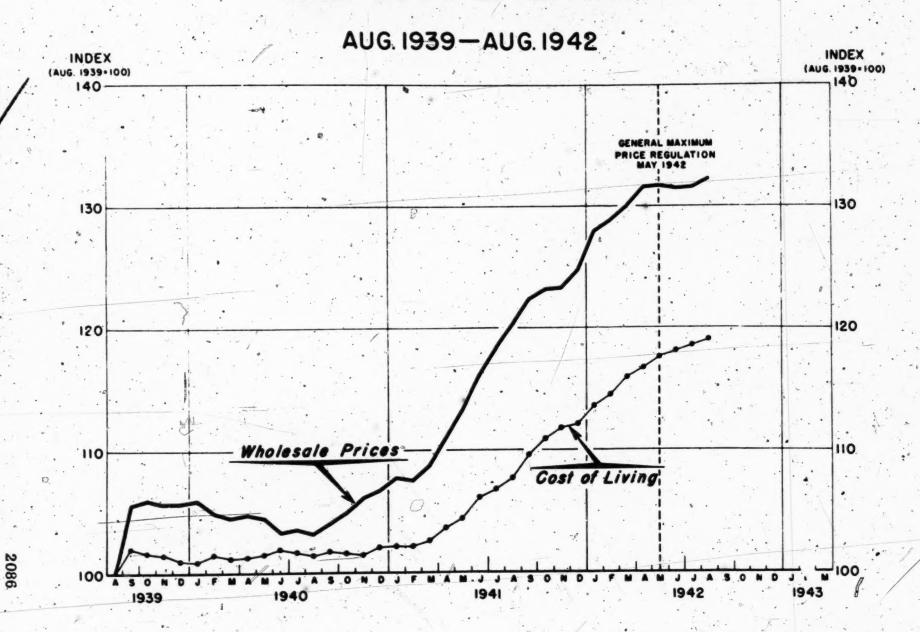




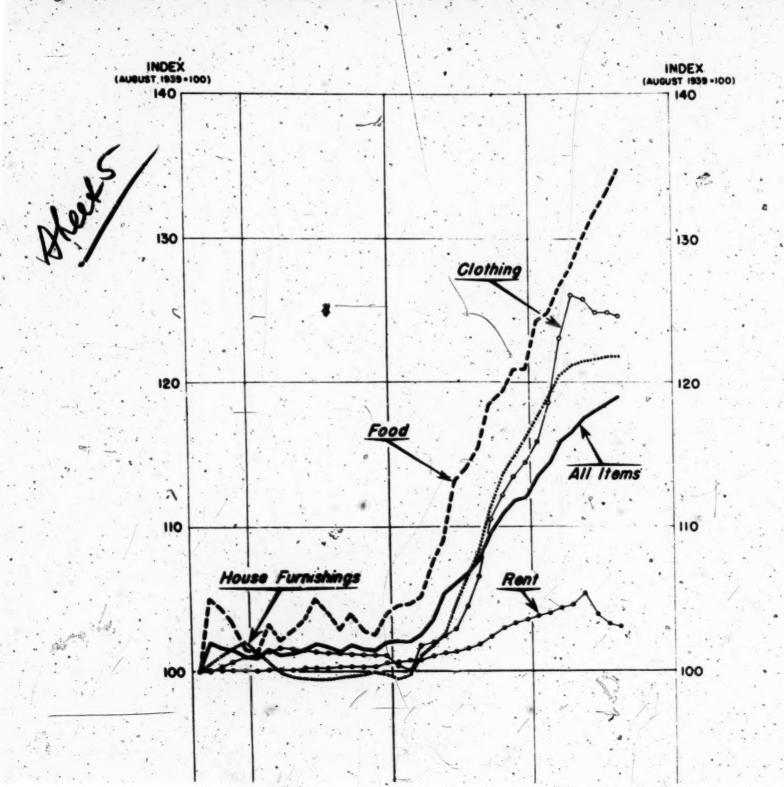
\*Estimates based on difference between wholesale price rises of all commedities, after then farm products and feeds in World Wars I Bill as shown by Bureau of Labor Statistics Indexes. Size of pragram based on Wor Production Board callmate.

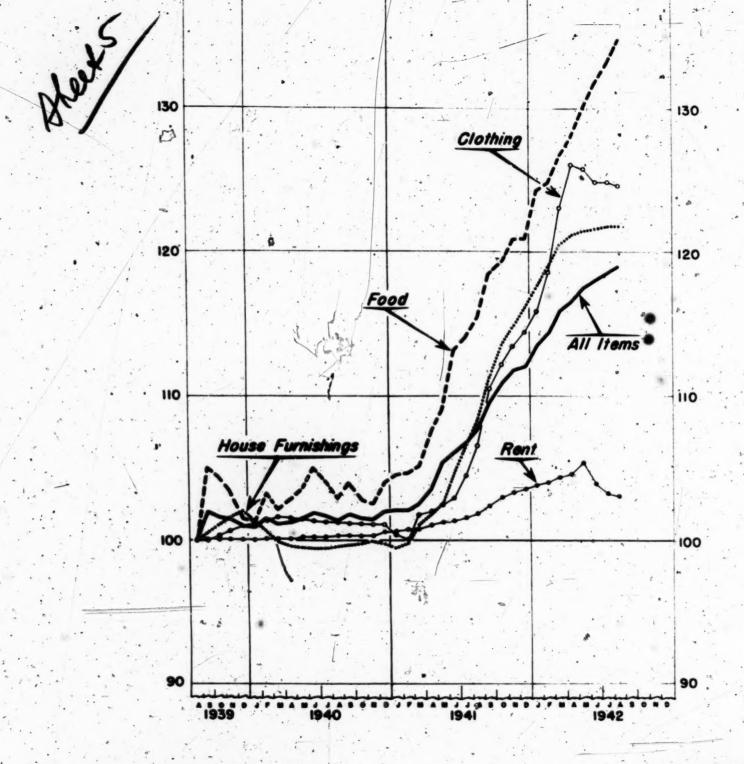
DIVISION OF RESEARCH NO 1172

# INDEXES OF WHOLESALE PRICES AND COST OF LIVING



### PRICES OF SELECTED COST OF LIVING ITEMS





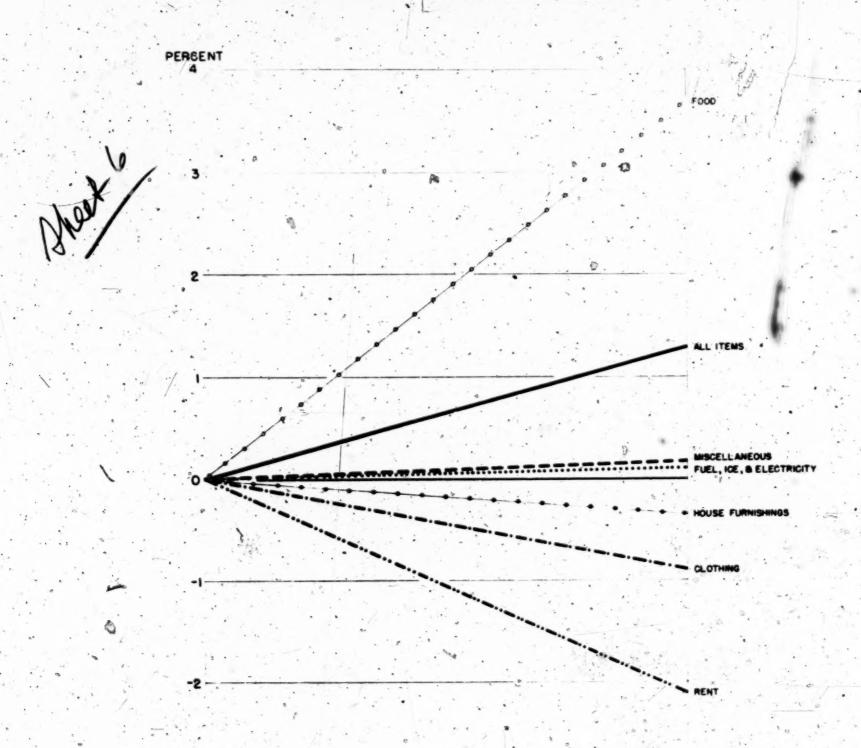
SOURCE: United States. Bureau of Labor, Statistics

OFFICE OF PRICE ADMINISTRATION DIVIDION OF RESEARCH NO 1876

2087

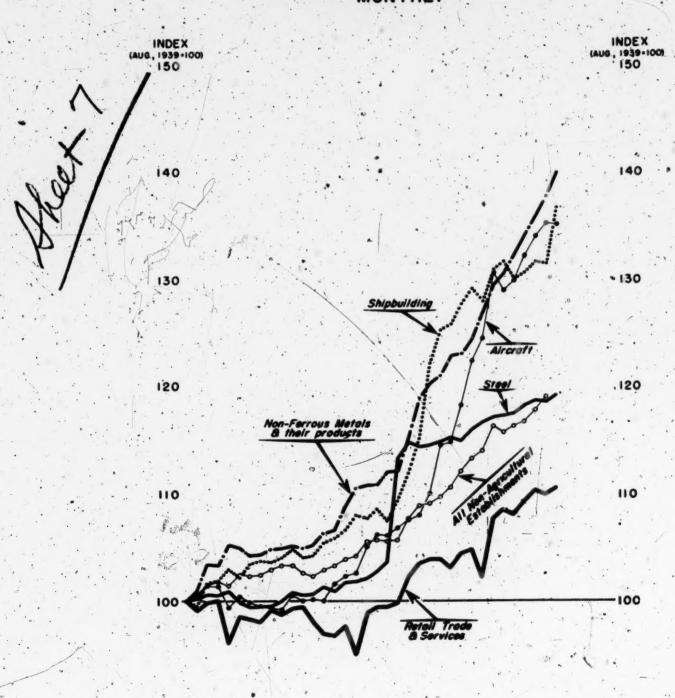
015

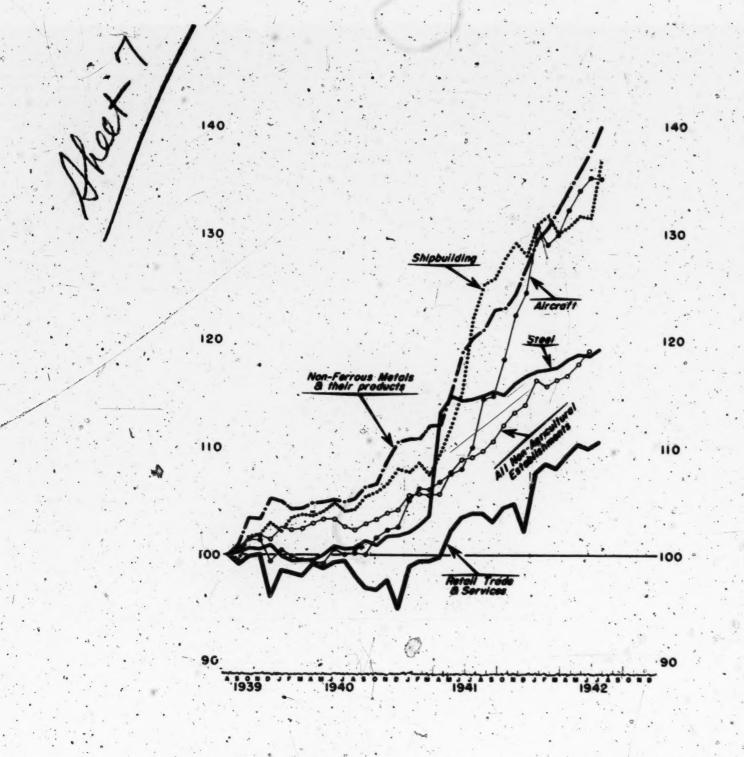
### PERCENTAGE CHANGES IN COST-OF-LIVING ITEMS MAY 15 AND AUGUST 15, 1942



## AVERAGE HOURLY EARNINGS IN SELECTED NON-AGRICULTURAL GROUPS

AUGUST, 1939 — JULY, 1942 MONTHLY

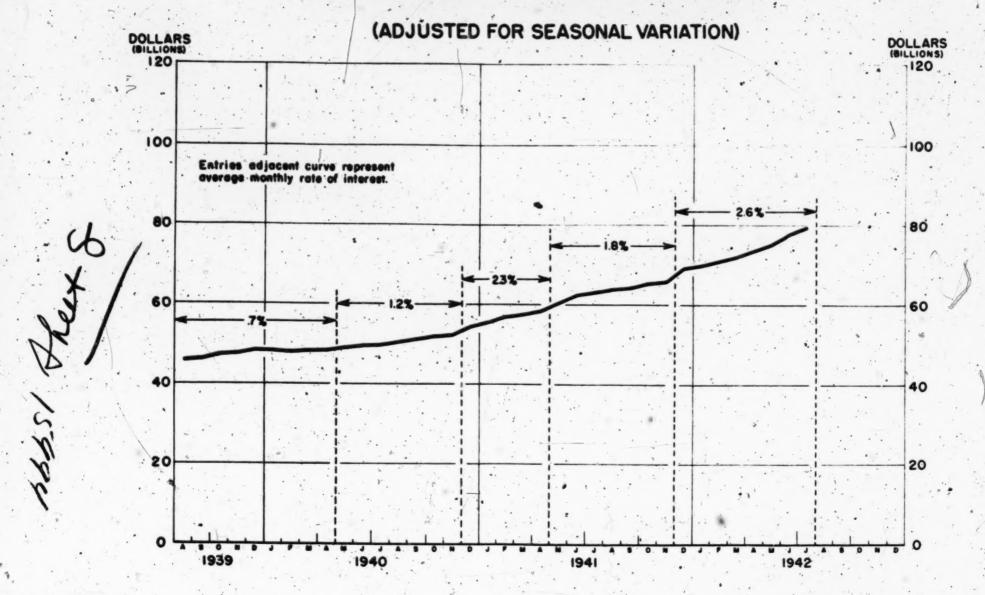




SOURCE: U. S. Department of Labor. Figures for Non-Agricultural Earnings estimated by Office of Price Administration.

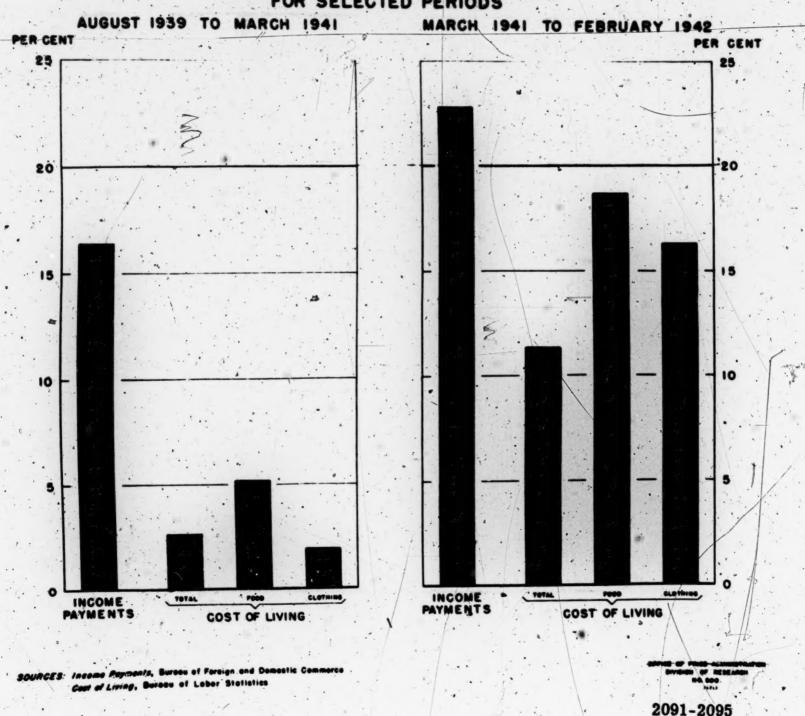
DIVISION OF RESEARCH
NO 1894

# SALARIES AND WAGES ANNUAL RATE OF PAYMENTS BY MONTHS



# INCREASES IN INCOME PAYMENTS AND COST OF LIVING

FOR SELECTED PERIODS



#### Ехнівіт No. 27

### I. C. C. Docket No. 28963

Statement Showing Total Railway Operating Revenues Earned in Alabama by Petitioners in I. C. C. Docket for Years 1939 up to and Including 1942

		1939	1940		KIND OF THE	1941"	1.0
Alabama Great Southern Atlanta, Birmingham & Coast Atlantic Coast Line Central of Georgia Gulf, Mobile and Ohio Mobile and Ohio Gulf, Mobile and Northern Illinois Central Louisville & Nashville Nashville, Chattanooga & St. Louis Seaboard Air Line Southern Railway St. Louis-San Francisco Western Railway of Alabama	A \$88,445 243,052 569.337 † 64,483 4,955,472 79,334 127,353 †	B C 781,760 1,430,468 1,673,520 2,963,920 3,533,257	A B † \$736,677 231,204 1,605,695 577,139 3,291,656 † † † † † † † † † † † † † † † † † †	.C \$6,934,758 838,534 1,836,899 3,868,795 11,694,628 21,238,632 2152,623 1,920,795 18,754,502 1,060,016 2,020,193 10,756,788 3,285,298 1,845,005	78,949 6,915,617 151,898 137,160	\$1,209,620 2,266,792 4,469,100 5,4 2,155,143 17,859,785 1,183,222 1,183,222 1,183,222 1,183,222 1,183,222 1,183,222 1,183,222 1,183,222 1,183,222 1,183,222 1,183,222 1,2,630,355 2,4,63,235 2,2,630,355	C 394,274 532,813 703,150 351,180 847,808 234,692 775,402 335,120 767,515 221,653 151,162 466,901 781,070

### EXPLANATION OF REFERENCES:

- A. Total actual Alabama intrastate revenue.

  B Total of interstate revenue assigned to Alabama.

  C Total railway operating revenue earned within Alabama.

- † Not shown.

  For the five months ended December 31, 1940.

  For the seven months ended July 31, 1940.

  For the eight months ended August 31, 1940.

  Increase of G. M. & O. for 1942 over revenues of M. & O. and G. M. & N. for 1939.

  Total revenues reported to Interstate Commerce Commission—intrastate statistics the same

AUTHORITY: Annual Reports of Petitioners filed with the Alabama Public Service Commission.

### Ехнівіт No. 27

### I. C. C. Docket No. 28963

Statement Showing Total Railway Operating Revenues Earned in Alabama by Petitioners in I. C. C. Docket No. 28963 for Years 1939 up to and Including 1942

1939	1940	1941	1942	Revenue For Increase In Revenue 1942 Over 1939 For 1942 Over 1939
B C A \$6,482,433 781,760 1,430,468 1,673,520 21	B. C/ \$6,934,758 01,857 \$736,677 838,534 131,204 1,605,695 1,836,899 177,139 3,291,656 3,868,795 1,1694,628	A B C \$323,193 \$1,209,620 1,532,813 436,358 2,266,792 2,703,150 882,080 4,469,100 5,351,180 † 4,847,808	\$512,671 \$1,622,289 985,120 4,468,799 1,122,084 6,071,182	16,667,918 \$10,185,485 157.1 2,134,960 1,353,200 173.1 5,453,919 3,780,399 225.9 7,193,266 3,660,009 103.6 6,800,496 4,309,258 173.0
12,116,977 17,072,449 5,5	70,608 1,850,187 1,920,795 660,825 13,193,677 18,754,502 73,090 986,926 1,060,016 117,503 1,902,690 2,020,193 1,045,005 1,945,005 1,045,005	78,949 2,155,143 2,234,092 6,915,617 17,859,795 24,775,402 151,898 1,183,222 1,335,120 137,160 2,630,355 2,767,515 16,221,653 4,151,162 2,466,901	8,993,298 29,726,094 3 312,839 1,894,540 168,313 3,861,757	2,332,464 38,719,392 2,207,379 1,210,527 4,030,070 2,221,422 122,8 17,113,227 1,374,645 2,626,687 21,351,333 \$71,153,930 32.2 126.8 121.4 122.8 141.7

### 'EXPLANATION OF REFERENCES:

- A Total actual Alabama intrastate revenue.

  B Total of interstate revenue assigned to Alabama.

  C Total railway operating revenue earned within Alabama.

  Not shown.

  For the five months ended December 31, 1940.

  For the seven months ended July 31, 1940.

  For the eight months ended August 31, 1940.

  Increase of G. M. & O. for 1942 over revenues of M. & O. and G. M. & N. for 1939.

  Total revenues reported to Interstate Commerce Commission—intrastate statistics the same.

AUTHORITY: Annual Reports of Petitioners filed with the Alabama Public Service Commission.

	Statement	t Showing Passer	nger Operating Re	venues and Revenu	es From Mail, Exp	press and Mark Ear	rned in Alabama by	. 1941			1942	1	1939			1940			1941			1942	· · · · ·	Increases In Revenues For 1942 Over 1939 except as shown)	Percentage Of Increase in Revenue For 1942 Over 1939 (except as shown)
Alabama Great Southern	A \$82,088	B \$399,287	C \$481,375	A \$83,692	B \$465,146	C . \$548,838 204,323	A \$88,316	\$989,774	C \$1,078,090 271,121	\$126,794	B \$2,425,815		B \$399,287	C \$481,375 193,950	\$83,692	B \$465,146	\$548,838 204,323	\$88,316	\$989,774	C \$1,078,090 271,121	\$126,794	\$2,425,815	\$2,552,609 327,380 99,952	\$2,071,234 133,430 21,171	430.3 68.8 26.4
Passenger Mail Express Milk Aller Pinningham & Coast		1	193,950 78,781 462		4.500	74,744 650 -	17 328	6.377	84,046 519 23,705	41,483	11,796		10,099	78,781 462 13,489	11,038	4,533	74,744 650 15,571	17,328	6,377	84,046 519 23,705	41,483 None	11,796	1,401 53,279 7,824	939 39,790	203.3 295.0 5.7
Atlanta, Birmingham & Coast Passenger Mail Express	3,390 None None None	10,099 7,780 3,472 None	13,489 7,780 3,472 None	None None None	4,533 7,835 3,588 None	15,571 7,835 3,588 None	None None None	7,864 3,876 None	7,864 3,876 None	None None None	7,824 4,988 None		7,780 3,472 None	7,780 3,472 None	None None None	7,835 3,588 None	7,835 3,588 None	None None None	7,864 3,876 None	7,864 3,876 None	None None None	4,988 None 600,254	4,988 None 679,740	1,516 None –	43.7 632.6
Atlantic Coast Line Passenger Mail	25,889 11,534	66,899 33,520 63,562	92,788 45,054 71,278	26,786 11,871 7,729	78,757 34,499 62,380	105,543 46,370 70,100	28,622 12,886 7,761	166,855 37,450 66,244 1,125	195,477 50,336 74:005 1,567	79,486 14,795 9,673 254	600,254 42(997 88,989 273		66,899 33,520 63,562 886	92,788 45,054 71,278 886	26,786. 11,871 7,729 None	78,757 34,499 62,380 867	105,543 46,370 70,100	28,622 12,886 7,761 442	166,855 37,450 66,244 1,125	195,477 50,336 74,005 1,567	79,486 14,795 9,673 254	42,997 • 88,989 273	57,792 98,662 527	12,738 27,384 Def 359	28.3 38.4 - 40.5
Express Milk Central of Georgia Passenger	None 94,933 1,932	886 181,969 66,339	,886 276,902 68,271	None 90,309 2,090	236,588 71,746	326,897 73,836	174,727 2,037 17,047 203	454,123 69,943 74,356	628,850 71,980 91,403	236,865 1,924 22,044	990,383 66,052 96,156		181,969 66,339 70,877	276,902 68,271 87,126	90,309 2,090 16,201	236,588 71,746 70,669	326,897 73,836 86,870	174,727 2,037 17,047	454,123 69,943 74,358	628,850 71,980 91,403	236,865. 1,924 22,044	990,383 66,052 96,156 1,809	1,227,248 67,976 118,200 2,348	Def 295 31,074	343.2 - 4 35.7 409.3
Mail. Express Milk. Gulf, Mobile & Ohio	16,249	70,877 343	87,126 461	16,201 234	70,669 783	86,870 1,017 \$1,069	203	2,231	2,434 127,053 58,092	539	1,809		343	- 461	234	783	1,017 51,069 24,275	203	2,231	2,434 127,053 58,092	1	1,809	279,027	201,335 Def 3,756	$ \begin{array}{c} 259.1 \\ -7.5 \\ 31.9 \end{array} $
Passenger Mail Express Milk	= ./		<u> </u>			1 24 275 1 9,810 1 1,758			28,383 3,788			•	27.377	69,654			9,810 1,758 37,069	. <u> </u>		28,383 3,788	1		4,529	4 1,279	39./4
Mobile & Ohio Passenger Mail Express Milk	42,27#	27,377	69,654 46,530 24,844 3,121			26,946 12,651 2,076			·				1	46,530 24,844 3,121	1 1		26,946 12,651 2,076	<u> </u>	<del>.</del>	1			ā .		
Gulf, Mobile & Northern Passenger Mail Express			8,038 3,718 1,243			3 4:743 3 2:471 673		=	·		- *			8,038 3,718 1,243 129			4,743 2,471 673 120	=	-			= .	=	•	
Milk Illinois Central Passenger Mail	7,595 None	90,241 14,335	97,836 14,335	7,169 None	106,676 14,403 26,179	113,845 14,403 26,179	7,242 None None	199,512 14,558 26,941	206,754 14,558 26,941	None None	455,813 14,159 35,830	•	90,241 14,335 26,411	97,836 14,335 26,411	7,169 None None	106,676 14,403 26,179	113,845 14,403 26,179	None None	199,512 14,558 26,941	206,754 14,558 26,941	None None	455,813 14,159 35,830 143	467,869 14,159 35,830 146	Def 176 9,419 69	378.2 - 1.2 35.7 89.6
Express Milk Louisville & Nashville Passenger	411,930	26,411 75 1,190,477	26,411 77	None 24 422,991 70,784	74 1,344,697 244,806	98 1,767,688 324,590	24 473,858 79,206	1,909,590 307,278	2,383,448 386,484	1,085,844 <sup>m</sup> 66,088	6,633,817 394,539 617,068		75 1,190,477 235,833	1,601,867 320,743	422,991 79,784	1,344,697 244,806	1,767,688 324,590	473,858 79,206 86,736	1,909,590 307,278 350,211	2,383,448 386,484 436,947	1,085,844 66,088 100,084	6,633,817 394,539 617,068	7,719,661 460,627 717,152	6,117,794 139,884 302,599	381.9 43.6 73.0
Mail. Express Mik. Nashville, Chattanooga & St. Louis	84,910 105,709 2,172	235,833 308,844 2,840	320,743 414,553 5,012	79,784 99,911 2,506	315,217 1,159	415,128 3,665	86,736 2,562 852	350,211 1,083	436,947 3,645 114,400	100,084 1,270 683	6,258 318,132 49,882		308,844 2,840 73,035	414,553 5,012 74,237	99,911 2,506 997	315,217 1,159 81,424	415,128 3,665 82,421	2,562 852-	113,548 45,903	3,645 114,400 46,245	683 105	6;258 318;132 49,882	7,528 318,815 49,987	2,516 244,578 8,072	329.5 19.3
Passenger Mail Express Milk	1;202 679 359 None	73,035 41,226 21,815 2,104	74,237 41,905 22,174 2,104	593 298 None	42,975 21,635 1,743	43,568 21,933 1,743	342 179 None	45,903 23,946 2,307	46,245 24,125 2,307	71 None	33,372 4,331 357,466		41,226 21,815 2,104	41,905 22,174 2,104	593 298 None	42,975 21,635 1,743	43,568 21,933 1,743	342 179 None	23,946 2,307 97,053	24,125 2,307	71 None 20,473	33,372 4,331 357,466	33,443 4,331 377,939	11, 269 2, 227 294, 766	50.8 105.8 354.4
Seaboard Air Line Passenger Mail Express	14,137 5,817 3,401	69,036 27,596 50,268	83,173 33,413 53,669	14,306 5,011 2,669 None	76,455 26,411 50,670 None	90,761 31,422 53,339 None	15,374 4,859 2,417 None	97,053 29,078 53,386 None	33, 937 55, 803 None	2,002 2,897 18	34,942 69,819 None		69,036 27,596 50,268 None	83,173 33,413 53,669 2	5,011 2,669 None	26,411 50,670 None	31,422 53,339 None	4,859 2,417 None	29,078 53,386 None	33,937 55,803 None	2,002 2,897 18	34,942 69,819 None	36,944 72;716 18	3,531 19,047 16	35.5 800.0
Milk Southern Railway Passenger Mail		None 420,695	613,464 253,933 115,307	191,489	456,985	648,474 274,042 113,575	2297617	825,937	1,055,554 282,203 128,714 582	451,005	2,452,268		420,695	613,464 253,933 115,307	191,489	456,985	648,474 274,042 113,575	229,617	825,937	1,055,554 282,203 128,714 582	451,005	2,452,268	2,903,273 295,504 179,078 484	2,289,809 41,571 63,771 84	373.3 16.4 55.3 21.0
Express Milk St. Louis-San-Francisco	20 474	101 260	211 734	18 124	203 864	221 988	201 885	978 570	299,455	43.474	758,686			100								•			
	•															1									
1		None	7. 3,472	3,472	None	3,588	3,588 None	None None	3.876 None	3,876 None	None None		3,472 None	3,472 None	None None	3,588 None	3,588 None	None None	3,876 None	3,876 None	None None	4,988 None	4,988 None 679,740	1,516 None 586,952	632.6
Express Milk Atlantic Coast Line Passenger Mail		25,889 11,534	None 66,899 33,520	92,788 45,054 71,278	26,786 11,871 7,729	78,757 34,499 62,380	105,543 46,370 70,100 867	28,622 12,886 7,761	166,855 37,450 66,244	195,477 50,336 74,005	79,486 14,795 9,673 254	, KKI.	66,899 33,520 63,562 886	92,788 45,054 71,278	26,786 11,871 7,729 None	78,757 34,499 62,380 867	105,543 46,370 70,100 867	28,622 12,886 7,761 442	166,855 37,450 66,244 1,125	195,477 50,336 74,005 1,567	79,486 14,795 9,673 254	600,254 42,997 88,989 273	57,792 98,662 527	12,738 27,384 Def 359	28.3 38.4 - 40.5
Express. Milk Central of Georgia Passenger		7,716 None 94,933	63,562 886 181,969 66,339	276,902 68,271	None 90,309 2,090	867 236,588 71,746 70,669	326,897 73,836 86,870	442 474,727 2,037 17,047	1,125 454,123 69,943	1,567 628,850 71,980 91,403	236, 865 1, 924 22, 044	697. 18.	181,969 66,339 70,877	276,902 68,271 87,126	90,309 2,090 16,201	236,588 71,746 70,669	326,897 73,836 86,870	174,727 2,037 17,047	454,123 69,943 74,356	628,850 71,980 91,403 2,434	236,865 1,924 22,044 539	990,383 66,052 96,156 1,809	1,227,248 67,976 118,200 2,348	950,346 295 31,074 1,887	343.2 - 4 35.7 409.3
Mail. Express	consideration .	1,932 16,249 118	70,877 343	87,126 461	16,201 234	70,669 783	1,017	17,047 203	74,356 2,231	127,053 . 58,092	539		343	461	234	783	1,017 51,069 1,24,275	203	2,231	127,053 58,092 28,383	1		279,027 46,492 26,919	Def 201,335 3,756 832	$-{259.1 \atop 7.5 \atop 31.9}$
Express		\$	<u> </u>				24,275 9,810 1,758		•	28,383 3,788			27,377	69,654		1	9,810 1,758 2 37,069 2 26,946			3,788	• =	• • •	4,529	4 · 1,279	39.4
		42,277	27,377	69,654 46,530 24,844 3,121		6	26,946 26,946 212,651 22,076		=	/= :		0.	•	46,530 24,844 3,121			12,651 2,076		-		1	- /	-		
Gulf, Mobile & Northern Passenger		‡	1	8,038 3,718 1,243			3 4.743 2.471 3 673					•		8,038 3,718 1,243 129			3 2,471 3 673 3 120	Ξ/:	=	- •		4EE 019	467,869	370 033	378.2
Express Milk Illinois Central Passenger Mail		7,595 None	90,241 14,335	97,836 14,335	7, 169 None	106,676 14,403 26,179	113,845 14,403 26,179	7,242 None None	199,512 14,558 26,941	206,754 14,558 26,941	None None		90,241 14,335 26,411	97,836 14,335 26,411	7,169 None None	106,676 14,403 26,179 74	113,845 14,403 26,179 98	None None None	199,512 14,558 26,941 84	206,754 14,558 26,941 108	None None None	455,813 14,159 35,830 143	14,159 35,830 146	Def 176 9,419 69	- 1.2 35.7 89.6
Express		None 2 411,930	26,411 75 1,190,477	26,411 77 1,601,867 320,743	None 24 422,991 79,784	1.344.697	98	24 473,858 79,206 86,736	1,909,590 307,278 350,211	2,383,448 386,484	1,085,844 66,088 100,084		1,190,477 235,833 308,844	1,601,867 320,743 414,553	422,991 79,784 99,911	1,344,697 244,806 315,217	1,767,688 324,590 415,128	473,858 79,206 86,736 2,562	1,909,590 307,278 350,211	2,383,448 386,484 436,947	1,085,844 66,088 100,084 1,270	6,633,817 394;539 617,068 6,258	7,719,661 460,627 717,152 7,528	6,117,794 139,884 302,599 2,516	381.9 43.6 73.0 50.2
MailExpress		84,910 105,709 2,172	235, 333 308, 844 2, 840	414,553 5,012	99,911 2,506 997	244,806 315,217 1,159	324,590 415,128 3,665 82,421	2,562 852	1,083	436,947 3,645 114,400	1,270 683 105		2,840 73,035	5,012 74,237 41,905	2,506 997 593	1,159 81,424 42,975	3,665 82,421 43,568 21,933	2,562 852 342 179	1.083 113,548 45,903	3,645 114,400 46,245 24,125	683 105 71	318,132 49,882 33,372 4,331	318,815 49,987 33,443 4,331	244,578 8,072 11,269	329.5 19.3 50.8 105.8
Passenger Mail Express		1,202 679 359 None	73,035 41,226 21,815 2,104	74,237 41,905 22,174 2,104	593 298 None	42,975 21,635 1,743	43,568 21,933 1,743	None 342 179	45,903 23,946 2,307	46,245 24,125 2,307	71 None 20,473		41,226 21,815 2,104 69,036	22, 174 2, r04 83, 173	None 14,306	21,635 1,743 76,455	90.761	None 15.374	23,946 2,307 97,053 29,078	24,123 2,307 112,427 33,937	None 20,473	357,466 34,942	377,939 36,944	2,227 294,766 3,531	354.4 10.6
	<b>S</b>	14,137 5,817 3,401	69,036 27,596 50,268 None	83,173 33,413 53,669	14,306 5,011 2,669 None	76,455 26,411 50,670 None	90,761 31,422 53,339 None	15,374 4,859 2,417 None	97,053 29,078 53,386 None	112,427 33,937 55,803 None	2,002 2,897 18		27,596 50,268 None	33,4/3 53,669 2	5.011 ° 2,669 None	26,411 50,670 None	31,422 53,339 None	4,859 2,417 None	53,386 None	55,803 None	2,002 2,897 18 451,005	69,819 None 2,452,268	72,716 18 2,993,273	19,047 16 2,289,809	35.5 800.0
Southern Railway Passenger Mail		192,769	420,695	613,464 253,933 115,307	191,489	456,985	648,474 274,042 113,575	229,617	825,937	1,055,554 282,203 128,714 582	451,005		420,695	613,464 253,933 115,307 400	191,489	456,985	648,474 274,042 113,575 487	229,617	825,937	282,203 128,714 582			295,504 179,078 484	41,571 63,771 84	16.4 55.3 21.0
Express				1473.7017			487	1			40.474			011 004	18.124	203,864	221,988	20,885	278,570	299,455 92,226	43,474	758,686	802,160	590,426	278.9
Milk. Se. Louis-San Francisco Passenger		20,474	191,260	211,734 80,648	18,124	203,864	221,988 85,016	20,885	278,570 1	299,455 92,226 47,879	43,474	/	191,260	211,734 80,648 41,087	+		85,016 45,074	1		47,879 649			92,679 76,351 819	35,264 272	14.9 85.8 49.7
Maik.  Se. Louis-San Francisco Passenger Mail. Express Milk.  Western Railway of Alaban	ma	20,474	191,260	400 211,734 80,648 41;087 547	18,124	203,864	221,988 85,016 45,074 568 294,080	20,885	278,570	92,226 47,879 649	43,474		191,260	80,648 41,087 547 281,301 70,040	‡ -		45,074 568 294,080 73,576	=		47,879 649 392,978 79,824		/ <b>!</b>	76,351 819 1,138,710 99,401 81,333	857,409 29,361 24,015	49.7 304.8 41.9 42.0
Milk Se, Louis-San Francisco Passenger Mail Express Milk Western Railway of Alaban Passenger Mail Express Milk	ma	20,474	191,260	211,734 80,648 41,087 547 281,301 70,040 57,282 324	18,124 † †	203,864	221,988 85,016 45,074 568 294,080 73,576 55,892 308	20,885	278,570	92,226 47,879 649 392,978 79,824 59,374 386	43,474		191,260	80,648 41,087 547	<b>1</b>		45,074 568 294,080			47,879 649 392,978		/ <b>!</b>	76,351 819 1,138,710 99,401	857,409 29,361	49.7 304.8 41.9
Milk Louis-San Francisco Passenger Mail Express Milk Western Railway of Alaban Passenger Mail Express Milk	ma	20,474	191,260	400 211,734 80,648 41,087 547 281,301 70,040 57,282 324 \$6,096,930 EXPLANATI	ON OF REFER		221,988 85,016 45,074 568 294,080 73,576 55,892 308 \$6,544,573	20,885	278,570 ‡	92,226 47,879 649 5 392,978 79,824 5 59,374 386	43,474		191,260	80,648 41,087 547 281,301 70,040 57,282 324 36,096,930 EXPLANA	TION OF REFER renues earned within renues from intersta al revenues earned	ENCES:  Alabama on intrite traffic assigned	45,074 568 294,080 73,576 55,892 308 \$6,544,573			47,879 649 392,978 79,824 59,374			76,351 819 1,138,710 99,401 81,333 22 \$21,643,872	272 857, 409 29, 361 24, 015 Def 302	304.8 41.9 42.0 93.2

B Revenues from interstate traffic assigned to Alabama.

C Total revenues earned within Alabama.

Not shown.

For the five months ended December 31, 1940.

For the seven months ended July 31, 1940.

For the eight months ended August 31, 1940.

Increases (except as shown) in revenues of G. M. & O. for 1942 over similar revenues of M. & O. and G. M. & N. for 1939.

Total revenues reported to Interstate Commerce Commission—intrastate statistics the same.

AUTHORITY: Annual Reports of Petitioners filed with the Alabama Public Service Commission.

C Total revenues earned within Alabama.

Not shown.

For the five months ended December 31, 1940.

For the seven months ended July 31, 1940.

For the eight months ended August 31, 1940.

Increases (except as shown) in revenues of G. M. & O. for 1942 over similar revenues of M. & O. and G. M. & N. for 1939.

Total revenues reported to Interstate Commerce Commission—intrastate statistics the same.

AUTHORITY: Annual Reports of Petitioners filed with the Alabama Public Service Commission.

Ехипвіт No. 30

[fol. 2099]

Ехнівіт No. 31

[fol. 2100]

Birmingham, Alabama

Southern Railway Passenger Tariff No. 7, ICC No. 8398.
Southern Railway Passenger Tariff No. 8, ICC No. 8589.
Agent Duggan's Tariff C-A No. 5, ICC No. H-4415.
Agent Duggan's Tariff C-A No. 4, ICC No. H-4064.
Southern Railway Local Passenger Tariff No. 19, AGS RR ICC No. 974.
L&N RR GPD No. 10351, ICC No. 8022.
L&N RR GPD No. 10799, ICC No. 8317. [fol. 2101]

Southern Railway Local Passenger Tariff No. R-6, ICC No. 8575. Southern Railway Local Passenger Tariff No. R-5, ICC No. 8296.

Central of Georgia Passenger Tariff A-3945, ICC No. 2216. Teche Greyhound Tariff No. 15-E and Southeastern Greyhound Tariff No. 4. Teche Greyhound Tariff No. 50-H.

Southeastern Greyhound Tariff No. 165

**8**18

Southeastern Greybound Tariff No. 2-F. Southeastern Greybound Tariff No. 29-E. Southeastern Greybound Tariff No. 26-D.

Crescent Stages Tariff No. 2-C. National Bus Traffic Association Passenger Tariff No. 350.

Southeastern Greyhound Tariff No. 26-D. Teche Greyhound Tariff No. 70-E. Capital Motor Lines Tariff No. 15.

Montgomery, Alabama

Crescent Stages Tariff No. 2-C.
Agent DeZonia's Southeastern Passenger Tariff No. 1-A.
L&N GPD No. 10351, ICC No. 8022 and L&N GPD No. 10790
L&N GPD No. 10352, ICC No. 8023 and L&N GPD No. 10790
ACL Passenger Tariff No. H-5, ICC No. A-3391.

Agent Duggan's Tariff C-A No. 4, ICC H. Agent Duggan's Tariff C-A No. 5, ICC H. W. Rwy. of Alabama Passenger 7 W. Rwy. of Alabama Passenger 7

<u>මම්පුහමුදීම්</u>

Statement Showing Scheduled and Restricted Stops of Various First Class Passenger Trains for that Portion Operated Through Alabama I. C. C. Docke' No. 28963-Witness Johnson **Ехнівіт** No. 32 Montgomer (4) Auburn (5) Chehaw Greenville Georgiana Opelika Western Railway of Alabama Piedmon Louisville & Nashville RR Auburn Chehaw Montgomery Georgiana Greenvill Opelika. Crescent 37-38 Hirmingham Decatur Hartselle Juliman Helena. Louisville & Nashville R. R. Azalean 1 Montgomery Birmingham Greenville Pan-American Flomaton Nos. 98-99 Decatur (1) Athens [fol. 2102]

Tennessean

Southerner

Birmingham Tuscaloosa

Pell City Anniston

Southern Railway System

AUTHORITY: The Official Guide of the Railways published by National Railway Publication Company. Evergreen Flomaton 3rewton Atmore

Bay Minette Mobile

Evergreen

Flomaton

Canoe

seorgiana Greenville

3av Minette

Mobile

Perdido Atmore

15)

Grand Bay

St. Elmo Theodore

Tomaton 3rewton

Montgomery

Calara

Mobile

Atmore

### [fol. 2103]

Stops for revenue passengers to or from Nashville and beyond or to or from Birmingham and beyond.

EXPLANATION, OF REFERENCES

- Stops for revenue passengers to or from Montgomery and beyond and to or from Atlanta and beyond.

  Regular stop westbound. Stops eastbound to let off passengers from Montgomery and beyond and to pick up passengers for Atlanta.
  - tegular strip westbound.
  - Regular stop eastbound. 99
    - sevond

Stops eastbound to take pay passengers for Atlanta and beyond. \Stops westbound to leave pay passengers from scheduled stops on West Point Route and from Atlanta and

- Stops to take or leave pay passengers to or from scheduled stops on West Point Route and to or from Atlanta and beyond. F@@
- Stops to leave revenue passengers from scheduled stops on West Point Route and from Atlanta and beyond and to leave revenue pasleave revenue passengers from scheduled stops on West Point Route and from Atlanta and beyond,
  - sengers from Mobile, Pensacola and beyond and take for Atlanta and beyond.
- Stops westbound on signal to receive or discharge revenue passengers.
  Stops to pick up or discharge passengers to or from Decatur and points west and to or from Chattanooga and points east Stops to leave or take revenue passengers from or to Birmingham or beyond or from or to Nashville and beyond. et off or take passengers from or to Montgomery and beyond or from or to Jacksonville or beyond. Stops southbound to let off may passengers from Montgomery or Pensacola and beyond

Hol. 2104]

### EXHIBIT No. 33 I. C. C. Docket, 28963—Witness Johnson BEFORE THE INTERSTATE COMMERCE COMMISSION

### ALABAMA INTRASTATE FARES DOCKET NO. 28963

STATEMENT SHOWING ALABAMA OPERATING REVENUES AND EXPENSES RELATED TO PASSENGER AND ALLIED SERVICES AS REPORTED IN ANNUAL REPORTS OF PETITIONERS FOR YEARS 1941 AND 1942. INCLUDES OPERATING REVENUES AND EXPENSES ON ALABAMA INTRASTATE PASSENGER TRAFFIC ACTUAL AND ASSIGNED.

AUTHORITIES: Annual reports of petitioners on file with Alabama Public Service Commission.

[fol. 2105]

#### Alabama Great Southern Railroad

	ZERROBINE CITCH	t Ddatmern remmen		1
	- \ "	1941	1942	1:
			Revenues	1
Passengers		2,638 271,121 84,046 6,756	4,2 327,3 5 99,9 6 16,3	02 80 52 69
Milk		62,550	) 154,2 3	
Total,		\$1,505,762	2 \$3,156,2 Expenses	47
Expenses apportion		sp83,82		008
Total. Operating Revenue Operating Expenses		\$1,505,76	3 \$1,695,7 2 \$3,156,2	760 247
Net Operating Reve	enues	\$282,85	9. \$1,460,4	187

[fol. 2106]

Atlanta-Birmingham and	Coast Railroad	16
X	Reven	ues
	1941	1942
Passenger	\$23,705.	\$53,279
Bagrage	50	75
Mail Express	7,864 3,876	4,988
Other Passenger		
Train		
Storage	in	
Baggage	· · · · · · · · · · · · · · · · · · ·	
Total Revenues	\$35,495	\$66,166
	Exper	bes
Expenses related solely to passenger and allied service	\$154,321	\$195,165
allied service.  Expenses apportioned to passager and allied service.	\$56,608	\$78,315
X	<b>9910 000</b>	\$273,480
Operating Revenues	\$210,929 \$35,495	\$66,166
Operating Expenses	210,929	273,480
Net Operating Revenue	\$175,434 def.	\$207,314 d
[fol. 2107] Atlantic Coast-Line	Railroad	*: //
	Reven	ues
	1941	1942 .
Passenger	\$195,477	\$679,740
Baggage	50,336	1,703 57,792
Express	74,005	98,662
Other passenger train	9,679	11,400
Milk	1,567	. 527
Dining and Buffet	10,856	19,303 88
Parcel. Storage.	4	00.
Baggage	42	367
Total	\$343,548	\$869,582
	. Exper	ises
Expenses related solely to passenger and allied service	\$241,483	\$421,965
Express apportioned to passenger and		
allied service	90,414	132,603
Total	\$331,897	\$554,568
Operating Revenues.	\$343,548	\$869,582
Operating Expenses	331,897	554,568
Net Operating Revenues	\$11,651	\$15,014

### Central of Georgia Railway

	Reve	nues
	1941	1942
Passenger	\$628,850	\$1,227,248
Passenger Baggage	1,409	1,426
Mail	71,980	67,976
Express	91,403	118,200
Other Passenger Train.	299	234
Milk.	2,404	2,348
Dining & Buffet	35,559	93,600
Parcel	9	26
Storage		56
Baggage	9	
Total	\$831,922	\$1,511,114
10tal.		enses
Expenses related solely to passenger and		
allied service	\$474,642 .	\$679,957
Expenses apportioned to passenger and		
allied service	304,603	382,156
/	9770 D45	\$1,062,113
Total?	\$779,245	\$1,511,114
Operating Revenue	\$831,922. 779,245	1,062,113
Operating Expenses	118,240	1,002,110
Net Operating Revenue	\$52;677	\$449,001
Net Operating Nevende		
[fol. 2109] Gulf, Mobile and Ohio		
	1941	1942
	A 1800 "	enues
Passenger	\$127,053	enues \$279,027
Passenger Baggage	\$127,053 128	\$279,027
Baggage	\$127,053 128 58,092	\$279,027 137 43,492
Baggage	Rev. \$127,053 128 58,092 28,383	\$279,027 137 43,492 26,919
Baggage	\$127,053 128 58,092 28,383 440	\$279,027 137 43,492 26,919 278
Baggage	Rev. \$127,053 128 58,092 28,383 440 3,788	\$279,027 137 43,492 26,919 278 4,527
Baggage Mail Express Other Passenger train Milk Dining & Buffet	Rev. \$127,053 128 58,092 28,383 440 3,788 5,500	\$279,027 137 43,492 26,919 278
Baggage Mail Express Other Passenger train Milk Dining & Buffet Parcel	Rev. \$127,053 128 58,092 28,383 440 3,788	\$279,027 137 43,492 26,919 278 4,527
Baggage Mail Express Other Passenger train Milk Dining & Buffet	Rev. \$127,053 128 58,092 28,383 440 3,788 5,500	\$279,027 137 43,492 26,919 278 4,527
Baggage Mail Express Other Passenger train Milk Dining & Buffet Parcel Storage & Baggage Sleeping Car	Rev. \$127,053 128 58,092 28,383 440 3,788 5,500	\$279,027 137 43,492 26,919 278 4,527 13,255
Baggage Mail Express Other Passenger train Milk Dining & Buffet Parcel Storage & Baggage Sleeping Car	Rev. \$127,053 128 58,092 28,383 440 3,788 5,500 1 7 2,356	\$279,027 137 43,492 26,919 278 4,527 13,255 7 3,131
Baggage Mail Express Other Passenger train Milk Dining & Buffet Parcel Storage & Baggage Sleeping Car. Total.	Rev. \$127,053 128 58,092 28,383 440 3,788 5,500 1 7 2,356	\$279,027 137 43,492 26,919 278 4,527 13,255
Baggage Mail Express Other Passenger train Milk Dining & Buffet Parcel Storage & Baggage Sleeping Car Total  Expenses related solely to Passenger and Allied Service	Rev. \$127,053 128 58,092 28,383 440 3,788 5,500 1 7 2,356	\$279,027 137 43,492 26,919 278 4,527 13,255 7 3,131
Baggage Mail Express Other Passenger train Milk Dining & Buffet Parcel Storage & Baggage Sleeping Car Total  Expenses related solely to Passenger and Allied Service Expenses apportioned to Passenger and	Rev. \$127,053 128 58,092 28,383 440 3,788 5,500 1 7 2,356 \$225,748 Exp	\$279,027 137 43,492 26,919 278 4,527 13,255 7 3,131 \$370,773
Baggage Mail Express Other Passenger train Milk Dining & Buffet Parcel Storage & Baggage Sleeping Car Total  Expenses related solely to Passenger and Allied Service	Rev. \$127,053 128 58,092 28,383 440 3,788 5,500 1 2,356  \$225,748  Exp \$314,047 \$104,207	\$279,027 137 43,492 26,919 278 4,527 13,255 7 3,131 \$370,773 benses \$340,943 \$105,451
Baggage Mail Express Other Passenger train Milk Dining & Buffet Parcel Storage & Baggage Sleeping Car Total.  Expenses related solely to Passenger and Allied Service Expenses apportioned to Passenger and Allied Service	Rev. \$127,053 128 58,092 28,383 440 3,788 5,500 1 2,356  \$225,748  Exp \$314,047 \$104,207	**************************************
Baggage Mail Express Other Passenger train Milk Dining & Buffet Parcel Storage & Baggage Sleeping Car Total.  Expenses related solely to Passenger and Allied Service Expenses apportioned to Passenger and Allied Service.  Total Gregating Revenue	Rev. \$127,053 128 58,092 28,383 440 3,788 5,500 1 7 2,356  \$225,748  Exp \$314,047 \$104,207  \$418,254 225,748	\$279,027 137 43,492 26,919 278 4,527 13,255 7 3,131 \$370,773 senses \$340,943 \$105,451 \$446,394 370,773
Baggage Mail Express Other Passenger train Milk Dining & Buffet Parcel Storage & Baggage Sleeping Car Total  Expenses related solely to Passenger and Allied Service Expenses apportioned to Passenger and Allied Service	Rev. \$127,053 128 58,092 28,383 440 3,788 5,500 1 2,356  \$225,748  Exp \$314,047 \$104,207	**************************************
Baggage Mail Express Other Passenger train Milk Dining & Buffet Parcel Storage & Baggage Sleeping Car Total.  Expenses related solely to Passenger and Allied Service Expenses apportioned to Passenger and Allied Service.  Total.  Operating Revenue	Rev. \$127,053 128 58,092 28,383 440 3,788 5,500 1 7 2,356  \$225,748  Exp \$314,047 \$104,207  \$418,254 225,748	\$279,027 137 43,492 26,919 278 4,527 13,255 7 3,131 \$370,773 benses \$340,943 \$105,451 \$446,394 370,773 446,394

	-	
Itol	2110]	
Inos.	******	

[fol. 2110] Illinois Ce	ntral	-
	1941	1942
		venues
Passenger.	\$206,754	\$467,869
Baggage	. 444	640
Mail Express	14,558	14,159
ther Passenger Train	26-941	35,830
III	10~	2,743
ning & Buffet	31.824	82,804
		00,001
Baggage	*********	Y
	\$284,989	\$604,191
while he is not in	Exp	enses .
related solely to Passenger and	\$272 914	\$374,655
s Apportioned to Passenger and Service		
1	83,661	122,568
otal	356,875	497.223
g Revenue	\$284,989	\$604,191
Expense:	356,875	497,223
ng Revenues	71,886-def	\$106,968
		9
	2.1	
Louisville and Nashvill	e Railroad Co.	
	Rev	enues
	1941	
		1942
* : * * 1	\$2,383,448	\$7,719,661
	9,232	11,424
***********************	386,484 436,947	460,627
ssenger train	9,340	717, 152 18,064
	3,645	7.528
l Buffet	153,068	541,738
	*********	
	1,081	1,590
d	\$3,383,245	\$9,477,784
	Expe	enses
related solely to passenger and		
apportioned to passenger and	\$2,597,851	\$3,955,669
ervice	918,413	1,234,999
Total	\$3,516,264	\$5,190,668
Z Kevenue	\$3,383,245	\$9,477,784
Expenses	3,516,264	5,199,668
ng Revenues	£122 010 4-4	04 007 110
	\$133,019 def.	\$4,287,116

Nashville, Chattanooga & St. Louis Rwy.

Passenger	\$114,400	318,815
Baggage Mail Express	579 46,245 24,125	49,987 33,443
Other Passenger Train	784 2,307	759 4,331
Dining & Buffet Parcel Room Storage.	5,384	15,412
Baggage Parlor & Chair Car	240	348
Total	\$194,064	\$423,611
	E	xpenses
Expenses apportioned to Passenger and allied service.  Expenses apportioned to Passenger and	\$116,760	\$152,273
Allied Service	29,929	40,968
Total	\$146,689	\$193,241
Operating Revenues	\$194,064	\$423,611
Operating Expenses	146,689	193,241
Net Operating Revenues	\$47,375	\$230,370
[fol. 2113] Seaboard Air Line		
11	K	evenues
	1941	/1942
Passenger	\$112,427	\$377,939
Baggage	1,777	2,035
Mail	33,937	. 36,944
Express	55,803 12,600	72,716 14,871
Other passenger train	. 12,000	14,011
Milk Dining and buffet	30,707	51,370
Parcel		· · · · · · · · · · · · · · · · · · ·
Storage-Baggage	- 5	8
· Totals	\$247,256	\$555,901
Grand Total Railway Operating Revenues	\$2,767,515	\$4,030,070
Grand Total Railway Operating Expenses	2,090,379	2,449,698
Net Operating Revenue	\$677,136	\$1,580,372
NOTE: Expenses chargeable to freight not shown separately in reports filed by this	and passenger carrier.	on intrastate traffi

Southern Rail	way	ues
	1941	1942
Passenger	\$1,055,554 2,999 282,203	\$2,903,273 3,920 295,504 179,078
Express. Other Passenger. Frain.	128,714 22,857 582	34,067 484
Milk Dining & Buffet Parcel Room	69,867 130	192,890 431
StorageBaggage	17	39 \$3,609,686
Total Revenues	\$1,562,923 Exper	
Expenses related solely to passenger and allied service	\$1,190,018	\$1,636,896
Expenses apportioned to passenger and allied service	\$420,143	\$556,091
Total Passenger Expenses Operating Revenues Operating Expenses	\$1,610,161 \$1,562,923 \$1,610,161	\$2,192,987 \$3,609,686 \$2,192,987
Net Operating Revenues	\$47,238 def.	\$1,416,699
St. Louis-San France	isco Railway	
St. Louis-San Franc	Reve	
	Reve	7942
Passenger	Reve	
Passenger. Baggage Mail Express Other Passenger Train.	Revei 1941 \$299,455 776 92,226 47,879	\$942 \$802,160 984 92,679 76,351 7,294 819
Passenger	Revei 1941 \$299,455 776 92,226 47,879	\$942 \$802,160 984 92,679 76,351 7,294
Passenger Baggage Mail Express Other Passenger Train Milk Diaing and Buffet Parcel Room Storage Baggage Sleeping car	Rever 1941 \$299,455 776 92,226 47,879 1,806 649 17,581	\$942 \$802,160 984 92,679 76,351 7,294 819 50,890
Passenger Baggage Mail Express Other Passenger Train Milk Dining and Buffet Parcel Room Storage Baggage Sleeping car Parlor & Chair Car	Rever 1941 \$299,455 776 92,226 47,879 1,806 649 17,581	\$942 \$802,160 984 92,679 76,351 7,294 819 50,890 1
Passenger. Baggage Mail Express Other Passenger Train Milk Diaing and Buffet Parcel Room Storage Baggage Sleeping car Parlor & Chair Car.  Total Revenue	Rever 1941 \$299,455 776 92,226 47,879 1,806 649 17,581 2,682 \$463,054	\$942 \$802,160 984 92,679 76,351 7,294 819 50,890
Passenger Baggage Mail Express Other Passenger Train Milk Diaing and Buffet Parcel Room Storage Baggage Sleeping car Parlor & Chair Car  Total Revenue  Expense related solely to passenger and allied service	Rever 1941 \$299,455 776 92,226 47,879 1,806 649 17,581 2,682 \$463,054 Experience San Property San	\$942 \$802,160 984 92,679 76,351 7,294 819 50,890 1 2,687 71 \$1,033,936
Passenger Baggage Mail Express Other Passenger Train Milk Diaing and Buffet Parcel Room Storage Baggage Sleeping car Parlor & Chair Car  Total Revenue  Expense related solely to passenger and	Rever 1941 \$299,455 776 92,226 47,879 1,806 649 17,581 2,682 \$463,054 Experience San Property San	\$942 \$802,160 984 92,679 76,351 7,294 819 50,890 1 2,687 71 \$1,033,936 enses
Passenger Baggage Mail Express Other Passenger Train. Milk Diaing and Buffet Parcel Room Storage Baggage Sleeping car Parlor & Chair Car  Total Revenue  Expense related solely to passenger and allied service Expenses apportioned to passenger and allied service  Total Passenger Expense.  Operating Revenue	Rever 1941 \$299, 455 776 92, 226 47, 879  1,806 649 17,581  2,682  \$463,054  Experiments and the second sec	\$942 \$802,160 984 92,679 76,351 7,294 819 50,890 1 2,687 71 \$1,033,936 enses \$473,114 319,301 \$792,415 1,033,936
Passenger Baggage Mail Express Other Passenger Train Milk Diaing and Buffet Parcel Room Storage Baggage Sleeping car Parlor & Chair Car  Total Revenue  Expense related solely to passenger and allied service Expenses apportioned to passenger and allied service	Rever 1941 \$299,455 776 92,226 47,879 1,806 649 17,581 2,682 \$463,054 Experimental Experimental Ex	\$942 \$802,160 984 92,679 76,351 7,294 819 50,890 1 2,687 71 \$1,033,936 enses \$473,114 319,301 \$792,413

### Western Railway of Alabama

		tevenues	
	1941	1942	
Passenger	\$377,680 1,354 73,837 52,825	\$1,094,582 1,726 93,615 - 75,583	
Other Passenger Train Milk Dining and Buffet	12,960 386 32,912	4 18,691 22 67,126	
Parcel Room	181	427	
\	\$552,135	\$1,351,772	
		Expenses	
Expense related solely to passenger and allied service.	\$391,569	\$498,279	
Expenses apportioned to passengers and allied service	\$141,899	146,880	
Total Passenger Expense Operating Revenues Operating Expenses	\$533,468 \$552,135 533,468	\$1,351,772	
Net Operating Revenue	\$18,667	\$706,613	

(Here follow 3 Pasters, side folios 2117, 2118, 2119, 2020)



### Ехнівіт No. 34 I. C. C. Docket No. 28963-Witness Mohr

Statement Showing Revenues, Expenses and Net Railway Operating Income
Three Months Ended March 1943 and 1942 Southern District

Region and Road	Average Miles of Road	Freight   (Accts. 10		Passenger (Accts. 10		Total O		/	perating enses	Net Rail Operating	
	Operated - 1943	1943	1942	1943	-1942	1943	1942	1943	1942	1943	1942
Alabama Great Southern Atlanta, Birmingham & Coast Atlantic Coast Line	315 639 4,987	\$4,159,025 1,636,516 28,568,189	\$2,941,186 1,018,447 16,684,693 4,570,096	\$1,020,816 178,437 9,358,031 1,617,717	\$437,964 108,087 4,807,742 796,328	\$5,445,005 1,894,125 40,138,809 8,960,637	\$3,581,620 1,191,119 23,135,835 5,912,180	\$2,853,869 1,223,279 18,653,178 5,503,511	\$2,127,926 988,824 14,931,891 4,499,939	\$673,373 247,020 5,979,620 2,290,406	\$507,251 20,862 5,130,103 938,536
Central of Georgia Gulf, Mobile & Ohio Illinois Central (Incl. Y & MV) Louisville and Nashville	1,816 1,972 6,355 4,745	6,598,740 8,922,487 49,804,706 37,530,716	5,874,593 37,594,427 28,204,194	558,824 7,944,268 10,213,669	177,790 4,244,295 3,473,417 638,662	9,747,798 61,023,733 50,478,477 9,730,935	6,297,845 44,277,886 33,495,813 5,518,668	5,795,687 38,847,038 28,169,512 5,834,396	4,522,496 29,747,065 22,838,219 4,361,109	1,362,271 10,940,046 6,421,462 2,074,003	796,488 7,960,999 5,479,394 639,044
Nashville, Chattanooga and St. Louis Sesboard Air Line Southern Railway Western Railway of Alabama St. Louis-San Francisco Sys. 5	1,090 4,184 6,514 133 4,830	7,208,887 23,989,858 43,190,416 842,854 19,000,121	4,394,409 15,125,976 32,636,638 573,929 13,803,383	1,825,330 9,828,037 12,395,531 343,805 5,123,760	5,113,512 4,936,128 160,787	35,955,388 59,080,695 1,294,915	21,633,212 40,002,756 802,258 17,048,305	19,211,442 31,037,357 733,437 16,651,590	15,211,659 26,234,156 539,784 12,643,357	11,221,608 8,358,762 163,600 5,800,943	4,395,301 7,266,019 112,867 3,605,691

Data shown for the St. Louis-San Francisco System includes the St. Louis-San Francisco & Texas.

AUTHORITY: Publication of The Association of American Railroads, Bureau of Railway Economics, Washington, D. C.

1036B

I. C. C. Docket No. 0000000—Witness Mohn

Statement Showing
Revenues, Expenses, and Net Railway Operating Income
Southern Region

Twelve months ended December, 1942 and 1941

Average Miles Region and Road of Road	Freight Revenue (Accts. 101 & 121)	Passenger Revenue (Acets, 102 & 122)	Total Operating Revenues	Tetal Operating Expenses	Net Railway Operating Income
Operated 1942	1942 1941	1942 1941	1942 1941	1942 1941	1942 1941
Southern Region: Alabama Great Southern	\$15,801,906 \$9,143,797		\$19,749,292 \$11,102,951	\$9,904,714 \$6,801,831 2,320,956 1,820,350	
Atlanta & West Point 93 Atlanta, Birmingham and Coast 639	2,505,099 1,796,664 5,310,066 4,071,175	1,102,865 385,918 430,064 326,212	4,000,671 2,401,044 6,035,089 4,662,498 115,108,820 67,404,252	4,737,770 3,656,206 62,947,631 46,859,449	305,611 213,791
Atlantic Coast Line 5,004 Central of Georgia 1,816	82,310,279 49,826,243 22,660,298 18,338,319 30,736,553 22,122,767	4,695,808 2,091,309.	29,503,084 22,336,739	18,969,814 16,027,243 20,674,982 16,126,523	7,711,979 4,385,060
Gulf, Mobile & Ohio	30,736,553 22,122,767 178,969,303 120,471,429 136,689,523 104,063,091	22, 531, 696, 12, 542, 496.	213,026,422 142,438,326 168,824,550 119,569,572	139,481,368 101,729,066	
Louisville & Nashville	24,045,988 16,257,795 76,350,934 48,476,540	4,654,317 1,706,194		19,662,787 14,128,156 67,010,358 48,800,722	30,383,971 10,106,964
Southern Ry. 6,519 Western Ry. of Alabama 133	* 156,635,034 116,520,375 2,863,392 1,826,403		204,605,581 139,926,434	2,420,534 1,849,715	805,357 299,760
St. Louis-San Francisco System c				56,514,188 44,785,078	26,797,992 12,125,397

NOTE A: Data shown for the St. Louis-San Francisco System includes the St. Louis, San Francisco & Texas.

Authority: Publications of the Association of American Railroads Bureau of Railway Economics Washington, D. C.

SP

### EXRIBIT No. 36 Witness: Mohr—I.C.C. Docket No. 28963

### Statement Showing Railway Revenues and Expenses

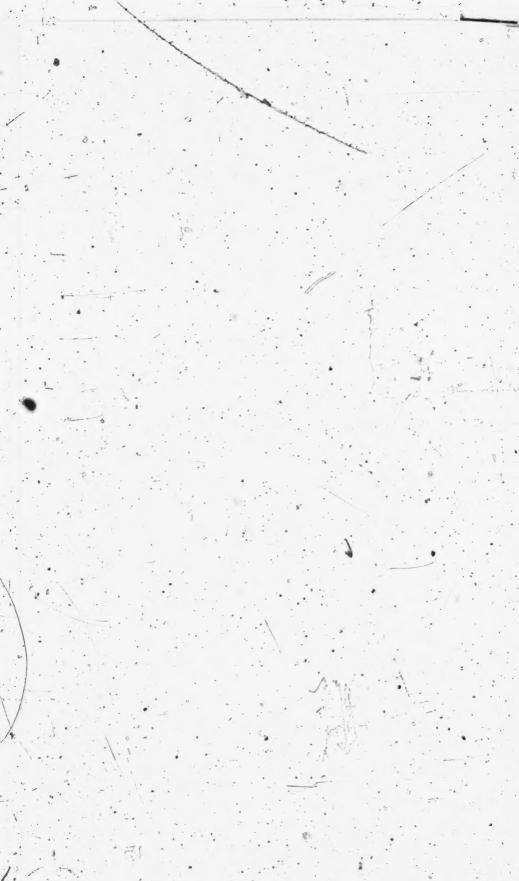
Railways of Class I in the United States (Excluding Switching and Terminal Companies)

For the month of March

For the 3 months ended March 31

			./ .				and a second confe			
Account	1943	1942	Incre 1943 over Amount			1943 .	1942	Increa 1943 over Amount		1
Total operating revenues	\$756,250,563	\$540,300,226	\$215,950,337	40.0	*2	091,164,289	\$1,483,477,396	\$607,686,893	41.0	
Freight	585, 251, 709	445,668,658	139,583,051	31.3		612,804,891	1,215,832,717	396,972,174	32.7	
Passenger	121,447,500	39, 105, 912	62,341,588			340.397.087	169.549.055	170.848.032.	100.8	
Mail	10,033,729	9,009,345	1,024,384	11.4	1	28,835;252	26,095,740		10.5	
Express	11.910.786	7,940,795	3,969,991	50.0		29,507,879	17,443,173	12.064.706	69.2	
_ All other	27,606,839	18,575,516	9,031,323	48.6		79,619,180	54,556,711	25,062,469	45.9	
Total operating expenses	449,440,079	360, 152, 483	89,287,596	24.8	1.	282, 103, 531	1.036.586.797	245,516,734	23.7	
Maint. of way & struct	80,422,735	54,832,217	25,590,518	46.7		225,500,631	151,875,348	73,625,283	48.5	
Maint, of equipment	115, 120, 688	98,059,345	17,061,343	17.4		327,969,691	282,460,249	45,509,442	16:1	
Traffic	10,130,698	9,795,398	335,300	3.4		30,294,580		1,433,553	5.0	
Transportation	220,546,176	179, 226, 113	41,320,063	23,1		639,802,560	520, 194, 522	110,608,038	21.3	1
General	14,863,297	13,145,370	1,717,927	13.1		43,246,651	_38,272,693		13.0	
All other	8,356,485	5,094,040	3,262,445	64.0		24,289,418		9,366,460	62.8	
Net operating revenue	306,810,484	180, 147, 743	126,662,741	70.3		809.060.758	446,890,599	362, 170, 159	81.0	
Taxes	161,808,023	76,334,529	85, 473, 494	112.0		422, 222, 184	188, 573, 161	233.649.023	123.9	
Payroll taxes	16,477,928	13,554,953	2,922,975	21.6		47,453,523	. 39,305,782	8.147.741	20.7	
Federal income taxes	120,677,241	41,622,753	79,054,488	189.9		303,795,980	87,877,992	215.917.988	245.7	
All other taxes		21,156,823	3,496,031	16.5		70,972,681	61,389,387	9,583,294	15.6	
Operating income	145,002,461	103,813,214	41, 189, 247	39.7		386,838,574	258,317,438	128.521.136	49.8	
Equipment rents	or 11,926,843	Dr 10, 162, 411	d 1,764,432	d 17.4	Dr	35,656,824	Dr 27,635,567	d 8,021,257	d 29.0	
Joint facility rents	or 3,428,580.	Dr 3,079,110	d 349,470		Dr .	10, 121, 983	Dr 8,999,888	d 1,122,095	d-12.5	
Net railway operating income	129,647,038	90,571,693	39,075,345	43.1		341,059,767	221,681,983	119,377,784	53.9	
Operating ratio—per cent				. * 5 * 6		61.31	69.88			
Average mileage represented	229,525	231,555	d 2,030	d 0.9.		229,595	231,596	d 2,001	d 0:9	
[fol. 2120]						5		9	4	
. Amount of depreciation included in					*					
maintenance of way and struc-		10 000 100	•			4				
tures and equipment expenses	26,535,985	19,695,109	* *******	* * * *		79,496,940	56,285,336			
d Decrease.				•						
Authority		1/1	4 .	1	." "					

Publication of the Association of American Railroads Bureau of Railway Economics Washington, D. C.



Rate of Return on Property Investment 12 months ended March 31.

	de Comment		
District	1943	1942 %	1943
Eastern District (Incl. Pocahontas Region). Southern District (Excl. Pocahontas Region). Western District.	233, 565, 154 714, 557, 128	\$466,770,654 142,865,761 410,005,566	5.24% 3.79% 6.88 4.36 6.33 3.72
United States	595,662,194	1,595,662,194 1,019,641,981	5.90

Ехигыт No. 37

[fol. 2,22]

Witness: Mohr

Statement Showing Railway Revenues and Expenses
Railways of Class I in the United States
(Excluding Switching and Terminal Companies)

For the 12 months ended December 31

			Increase 1942 over 1941	141	
	1942	1941	Amount	Per cent	
Total Operating Revenues	227	669	527		
			1.497.174.140	33.7	
	185	687	498		
	377.	192	184		
	.698	281	587		
	.052	970	085		
Total Operating Expenses	429	232	197.		
Maint, of way & struct, a	383	088	295		•
Maint, of equipment 'a	083	612.	471		
	.777.	888	880		
	990	958	031		
	300	201	660		
	.893	482	410		
Net Operating Revenue	.797.	467	329		•
	443	230	213.	_	
	040	043	002		
All Other Taxes	.393.	186	207	7	
	.353	237.	.116.		
Q	.022	102,176,	845,	P	
Joint Facility Rents	390	774.	616.	7	*
Net Railway Operating Income	.940.	286.	654		1
Operating ratio per cent	61,63	68.53	1		
pregented			0)1'1'	0.0	
Chinomic of defections in the contract of the	\$247,403,404	\$221,015,790			

9	=	7
-	N	í
	-	4
4	S	ě
•	c	5
4	-	4
	-	ره

Rate of Return on Property Investment 12 months ended December 31

\$488,675,187 4.97% 3.97% 138,673,395 6.54 4.35 3.42	998, 286, 708 5, 56 3.79	oks, including material and supplies
 \$611,617,649 \$488 214,151,928 ±138 655,171,183 370	1,480,940,760 998	iers as shown by their bo
Eastern District (Incl. Pocahontas Region). Southern District (Excl. Pocahontas Region) Western District.	United States	Note: "Rate of Return" is computed on the property investment of the carriers as shown by their books, including material and supplies and cash, as of January 1, 1942, and 1941, respectively.

Authority:
Publications of the Association of American Railroads,
Bureau of Railway Economics,
Washington, D. C.

# Ехнівіт No. 38

Witness: Mohr—I.C.C. Docket No. 28963

\$333,707,494 \$21,853,619 377,725,321 352,542,542 351,651,223 365,085,700 359,611,956 363,085,700 372,925,813 318,180,377 300,320,822 4,166,068,602 Statement Showing Total Operating Revenues, Expenses, and Net Railway Operating Income-United States 251, 108, 385 251, 037, 615 283, 017, 974 272, 609, 400 282, 080, 672 299, 589, 726 315, 335, 418 353, 384, 223 319, 629, 288 318, 281, 916 3,565,490,753 \$305,778,767 276,504,334 315,091,017 302,617,754 302,617,948 321,616,735 332,435,852 344,399,562 344,399,562 344,399,717,880 344,399,717,880 368,026,739 3,995,004,251 Railways of Class I. (Excluding Switching and Terminal Companies 939 639,123 594,852 131,789 257,097 220,237 238,438 714,515 712,272 498,853 936,980 4,298,001,598 **Fotal Operating Revenues** By Months, 1937 to 1942 327, 327, 327, 321, 321, 321, 321, 382, 382, 382, 382, 381, \$377,374,190 358,413,499 416,319,161 357,008,368 442,285,876 455,022,722 485,446,396 493,674,008 493,674,008 457,011,853 479,560,154 5,346,699,998 1941 \$480,691,157 462,486,015 540,300,287, 671,395 601,064,747 623,687,416 665,181,539 683,806,778 683,806,778 683,806,778 697,792,146 697,792,146 702,995,272 7,466,227,054 Total—Calendar Year a Month August... October ... January . . November

[fol. 2125] Month			0.01	0000			
The state of the s			OFAT	1998	1938	1937	-
		Total Operating	Expenses				
January	.780	. 971	395.	.946	.565.	668	
February	.653	.590	579	619	353	080	
March	.140	328	634	.358	000	198	
April	755	938	877	622	484	949	
Mav	449	.590	854	411	054	225	
June	.472	932	507	785	132	521	
July	476	034	064	962	166	585	
August	292	843	571	621	572	180	
September	-	312,288,197	260, 239, 661	.166	.982		
October.	.430	,513,	.780	538	354	.357	
November	.389	614	517	170	203	295	
December	431,873,000	,589,		249,006,533	232,619,459	243, 354, 701	
Total-Calendar Year a	4,601,429,943	3,664,232,235	3,090,173,137	2,918,209,708	2,722,199,007	3,119,064,934	
	Z	et Railway Oper	ating Income	•			
Jahnary	996	017	013	947	144	866	-
February	486	135	856	637	800	783	,
March		80.170.452		34.375.047	728	881	
April	034	074	120	323	397	357	
May	672	104	408	172	665	239	
June	730	316	060	166	159	354	
July	00	381	725	986	431	985	
August	264	411	.530	567	421	756	
September	.631	358	.715.	529	406	621.	
October.	.680	047	638	716.	594	860	
November.	948	933	560	414	692	519.	
December	986,028,021	,332,	78,850,744	981	49,418,855	25, 994, 857	
· Total—Calendar Year a	1,480,940,760	998.286.708	682,543,218	588,829,083	372.873.771	590, 203, 925	
a "Total"—Calendar Year" with the sum of the monthly to	based on annual reports f tals.	or years 1937 to	1940 and revised	monthly reports	or 1941, and do n	ot always agree	
Authorite							1
Dublications of the Associa	tion of American Pollroad						04

[fol. 2125]

Authority:
Publications of the Association of American Railroads,
Bureau of Railway Economics,
Washington, D. C.

Rail	By Iways of Class I (	Months 1938 to (Excluding Swite)	and Net Kallway 1943 hing and Termina	Operating Incomal Companies)	e-United States		
Month	1943	1942 Total Operating	1941 Revenues	0761	1939	1938	
January. February	\$671,334,151	688,	374	639	.778	108	
March.	250	540,300,226	416,319,161	327, 131, 789	315,091,017	283,017,974	. /
May	1-1	38	88	494	617	600	
July		.687	.022	952,	616	8	
August		808	674	538	300	335	
September	1.	792	978	,714,	117	542	
November		108	35	498	026	86. 80. 80.	
December		. 995	560	936	180	281	5
Total—Calendar Year a	1	7,466,227,054	5,346,699,997	4,296,600,653	3,995,004,251	3,565,490,753	
		Total Operating	Expenses		•		
January	\$424, 201, 291	.738	.971,	.395.	946,	,565,	
March	4.0	152	3280	634	619,	,353,	
April	1	.755	938	877	622	3	
June	11	375,449,774	296, 590, 475	252,854,916	237,411,054	217,054,008	
July		476	34	9	962	166	
September		705	× 243	,571,	,621,	.572.	
October		138	513	780	238	354	1 .
Docombor	1	389	614,	,517,	170	203	
	The state of the s	. 5/3.	.089	148	900	619	
Total Calendar year a		4,607,429,943	3,664,232,230	3,089,417,209	2,918,209,708	2,722,199,007	

Statement, Showing Total Operating Revenues, Expenses and Net Railway Operating Income-United States By Months 1938 to 1943

Companies)
Terminal
pup
Switching
(Excluding
Class I
0
. (Railways

January	296	\$66.850.	017	013	947/	144
February	106, 132, 776	64,345,273	58, 135, 957	32,856,489	18.637,706	Def 1,909/133
March	647.	.571	170	034	375.	728
April	1	.034	074	120	323	397.
May		672.	104	408	172	665.
June	1	.730	.316.	000	166	159.
July	1	100	381	.725.	966	431.
August		264	411	530	567	421.
September	1	.631	358	715.	529	406
October.	+	.680	047	638	716.	594
November	1	.948	933	260	414	692.
December	1 -			850	981	418,
Total—Calendar yeara	4.1	1,480,940,760	998,255,787	682,133,478	588,829,083	372,873,771

Authority:

Publication of The Association of American Railroads
Bureau of Railway Economics,
Washington, D. C.

_	ò
-	•
2	
-	
. 60	
d	
-	۱
eember, 1937 to 1	
2	
-	
6	ĺ
. 5	
*-Twelve Months Ended De	ľ
-	
7	١
- 5	
č	
(-)	
980	
2	
1	
0	
7	
-	
2	
-	
3	
-	
-	
1	
8	
-	
3	
00	
P	
3	
5	
-1	
1	
1	
. 3	
9	
5	
4	
. 63	
Ē	
0	
0	
=	
ating Income Account-United States-	
-	
===	
95	
9	
0	
0	
80	
E	
-	
0	
5	1
02	
ement Showing Opera	
-	
8	
-	

																		. *		
*					_		-	_					_	_	_				,	
		601	38	88	928	835	932	50	997	18	848	127	699	199	470	822	652	200	511	
1942	937	890	9	983	882	183	29	8	38	74	4	2	03	965	138	28	13,	3,2	35,	
to 19	19	166,0					-	-	- 1	- 2		-	_	-		-			64	
-	+ .	4.6	5 4			7	3,1	40	ò=	5	-		0.1	ò	-	20		Ö.		
1937		*	- 90	8	. 9	1	10		- 2	0	-	N	9	8	00		_	2 4	. 9	
ber,		551																		
em	888	828	42	95	45	8	49	8	59	9	50	962	33	9	3	808	621	3,	234	
De	1	564	405	95	48	157	721	35	38	361	127	33	843	35	502	3	2	2/3		
Ended		200	•			+	3			-			-			à	בֿ		-	_
		243	4	370	8	Š	90	200	34	Ξ	819	152	37	22	8	27	2	3	62	
nths nice	6	900				-								-	-	-	~;		4.	
Mon	193													-					N	
Ser		995	<u>;</u> ±	0	rO.	1	6	35	25	4	12	3	6	8			•	ô		
Twelve Months inal Companies)					~	_	7	_		-	-	2.	_			Ď,				
1 2		598	8	89	86	78	13	200	5	8	100	293	461	010	445	682	7	88	824	
States nd Ter	96	100	268	989	642	38	173	167	203	392	498	418	828	623	802	735	92	2.5	232	
	-19	537	1	0	55	3	8	50	02	0	30	34	20	88	=	95	200	170		
United		4 4		_			3,0	4.0	-	1.5	-		1,2	m	00	-	7	0		
1 3		908	35	99	2	3	33	72	28	2	8	R	23	2	2	9	1 9	25	98	
Swi			-									-		-	-	-		- 70	1.1	
Account uding Sw	2	689																	23	1
e A	-	346	5	108	57	218	3	38	Ξ	774	138	43	682	2	3	25	200	8	./	
S (3)	•	13.4		= 1		. 1	0		3	-			-		-	à	5		1	
owing Operating Income Railways of Class I (Exch		473	625	031	122	200	9	3,5	507	54	616	22	Ξ	297	814	900	200	32	012	
C th	67	227	3	177	69	52,	67	23	1	8	8	8	32	43,	23	77	39	5	31.	
per	2		028	*												-	1		63	
g O		5.9	1.0	=	-	7	3	35	Ξ	2,24	. 12		8.8	8		7				
win	. 4	•0				4					٠.				7	ā	3		:	
Sho		: :			1	4	:				**				1.			. :	:	
ent			. :		1		1							1		à				ė
tem												0	1						p	
Stal	•	88	2 .				7	Ž t				1		1000		* * *		1	nte	
. 1	Account	enu	:				ens	S SI	. :				ide:				n CS	200	rese	
5	Acc	Lev.					exp	À.		tion	:		ven		e	Len	Y L	9	. E	,
-		gai	er.				Ing	3 4		rta			g re		E 00	ent		100	age	
		erat	eng	:	583	the	erat	1	fic.	bp	eral	the	atin		E S		180	Z La	mile	
1		d operati	Passenger	MRI	Express	All other.	0	Maint, of way & struct	Traffic	Fransportation.	General	All other.	ber	laxes	tin.	100	Joint lacility rents.	tin	. ag	
		Total operating revenues.				1	dotal operating expenses.	4 86				-	Net operating revenue:		Operating income	-	Not railway opporating incom	Operating ratio—per cent	Average mileage represente	
- 1		L		1	-	ŧ	7					-	4	-	0	-	1	0	Y	

Publications of the Association of American Railroads Bureau of Railway Economics Washington, D. C. Authority:





[fol. 2134]

Western District:

Subject to Revision

# Exempt No. 40 Statement No. M-250, December 1942—Witness Bruce

# Interstate Commerce Commission Bureau of Transport Economics and Statistics

Passenger Traffic Statistics (Other Than Commutation) of Class I Steam Railways in the United States Separated between Coach Traffic and Parlor and Sleeping Car Traffic

Compiled from 119 reports representing 128 steam railways (Switching and Terminal Companies not Included)

				AGGE	For the mon	th of December 1	942 and 1941			AVE	RAGES		
,	District and region	Passenge (whole	r-revenue dollars) In parlor and	Number of passenger	f revenue s carried . In parlor and	Number of reve carried of In coaches	nue passengers one mile In parlor and	Revenue p mile	er passenger- (cents) In parlor and sleep-	Revenue per road	d (dollars)	per	r passenger road In parlor and sleep-
	United States (total):		sleeping cars		sleeping cars		sleeping cars	coaches	ing cars	coaches	ing cars	coaches	ing cars
1.	1942 1941 Percent of change	\$71,381,614 29,131,211 +145.0	\$43,269,650 21,100,580 +105.1	22.114.223	2,282,953	1,767,943,557	1,799,483,807 934,999,831 +92.5	1.65	2.40¢ 2.26 +6.2	\$1.80 1.32 +36.4	\$9.99 9.24 +8.1	103.7 79.9 +29.8	415.6 409.6 +1.5
	Eastern District:	• 10		1			•						, ,
	1942. 1941. Percent of change. Southern District:	31,929,117 15,060,364 +112.0	8,581,832	25,774,619 14,859,712 +73.5	1,014,982	841,412,913	464,690,912 318,490,996 +45.9	1.79	2.94 2.69 +9.3	1.24 1.01 +22.8	9.51 8.46 +12.4.	67.3 56.6 +18.9	323.0 313.8 +2.9
	Pocahontas Region,				•		***						
	1942 1941 Percent of change	2,700,850 912,315 +196.0	484,005	1,347,949 544,143 +147.7	168,927 90,905 +85.8		48,184,854 19,068,140 +152.7	1.62	2.74 2.54 +7.9	2.00 1.68 +20.5	7.81 5:32 +46.8	121.0 103.6 +16.8	285.2 209.8 +35.9
-	Southern Region,			-10-0							3/		
	1942 1941 Percent of change	12.840,228 4,935,352 +160.2	2,913/179	5,998,589 3,646,319 +64.5	840,452 348,758 +141.0	334,260,552	265,179,845 114,138,232 +132.3	1.48	2.68 2.55 +5.1	2.14 1.35 +58.5	8.45 8.35 +1.2	123.3 91.7 +34.5	315.5 327.3 -3.6
•	Western District:				<i>i</i>					,			0.0
	1942 1941 Percent of change	23,911,419 8,223;180 +190.8	21, 170, 777 9, 121, 564 +132.1	6,572,397 3,064,049 +114.5	1,882,112 828,308 +127.2	1,480,070,655 535,914,881 +176,2	483,302,463	1.53	2.07 1.89 +9.5	3.64 2.68 +35.8	11.25 11.01 +2.2	225.2 174.9 +28.8	542.7 583.5 -7.0
1	NOTE -Statistics of commuta (OVER)	tion passenger	traffic are pub	lished in State	ement No. M	-220, Revenue Tr	affic Statistics.						
	[fols. 2135-2217]	in the	,	. 6.				4 4				4	
	United States (total):		. :/	1		• • • • •							16
		\$548.524.998	\$429,203,332 209,152,784 +105.2	353,862,886 229,967,500 +53.9	45,382,936 24,158,390 +87,9	31,066,087,009 16,106,036,240 +92,9	9,166,038,661	1.64	2.40¢ 2.28	\$1.55 1.15	\$9.46 8.66	87.8 70.0	393 4 379 4
	Eastern District:		. , , , , , , ,	100.0	101.0	732.8	+94.8	+7.9	+5.3	+34.8	+9.2	+25.4	+3.7
	1942. 1941. Percent of change. Southern District:	278,946,289 145,063,716 +92.3	147,470,528 85,319,926 +72.8	243,044,041 159,840,287 +52.1	17,291,612 10,881,642 +58.9	14,477,048,849 8,067,426,372 +79,5	5,039,889,589 3,167,537,556 +59.1	1.93 1.80 +7.2	2.93 2.69 +8.9	1.15 91 +26.4	8.53 7.84 +8.8	59.6 50.5 +18.0	291 5 291 1 +0 1
	Pocahontas Region,		•										
1	1942. 1941. Percent of change.	19,352,943 • 7,917,173 +144.4	12,864,615 5,515,928 +133.2	10,155,150 $6,244,260$ $+62.6$	1,953,097 1,062,506 +83.8	1,087,242,079 508,267,306 +113.9,	454,890,310 212,669,356 +113.9	1.78 1.56 +14.1	2:83 2:59 +9.3	1.91 1.27 +50.4	6.59 5.19 +27.0	107.1 81.4 +31.6	232.9 200.2 +16.3
	Southern Region,									1			
	1942	91,149,190 40,809,774 +123.4	75,160,331 30,445,578 +146.9	50,519,554 34,115,741 +48,1	8,834,516 3,937,325 +124.4	5,667,643,607 2,823,737,469 +100.7	2,917,937,582 1,286,277,447 +126.9		2.58 2.37 +8.9	1.80 1.20 +50.0	8.51 7.73 +10.1	112.2 82.8 +35.5	330.3 326.7 +1.1

[File endorsement omitted]

[fols. 2219-2220] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

Civil Action No. 708

Commonwealth of Kentucky, and Railroad Commission of Kentucky, Plaintiffs,

VS.

UNITED STATES OF AMERICA, Defendant

Petition-Filed June 12, 1944

Come now Commonwealth of Kentucky, and Railroad Commission of Kentucky, plaintiffs herein, and for cause of action say:

I

This suit is brought pursuant to the provisions of Sections 41(28), 43, and 45-48, inclusive, of Title 28, of the United States Code.

H

Plaintiffs were protestants in the proceeding before the Interstate Commerce Commission, described more fully hereinafter, wherein the order sought herein to be enjoined, set aside and annulled, was issued.

Plaintiff, Commonwealth of Kentucky, is a sovereign state, and is represented in this proceeding by Eldon S. Dummit, its duly elected, qualified and acting Attorney General, who brings this suit in its behalf and by his authority as such Attorney General.

Plaintiff, Railroad Commission of Kentucky, is a body politic, created by the Constitution of the Commonwealth of Kentucky, and is represented in this proceeding by Frank L. McCarthy, Jack E. Fisher, and Clay M. Bishop, its duly elected, qualified and acting members, who bring this suit in its behalf and in behalf of the citizens of Kentucky, and by their authority as such members. Under the Constitution and laws of the Commonwealth of Kentucky, plaintiff, Railroad Commission of Kentucky, is charged with the duty and authority of supervising, regulating and enforcing all rates, fares and charges for transportation services per-

formed by the railroads as common carriers in intrastate commerce within the state of Kentucky.

Plaintiffs have their principal offices and places of busi-

ness at Frankfort, Ky.

[fol. 2221]

IIL

United States of America is made defendant herein by virtue of the provisions of Section 46, of Title 28, of the United States Code.

#### IV

This suit is brought in the United States District Court for the Western District of Kentucky pursuant to the provisions of Section 43, of Title 28, of the United States Code. Louisville and Nashville Railroad Company is one of the parties upon whose petition the order of the Interstate Commerce Commission hereinafter complained of was made. Said Louisville and Nashville Railroad Company is a Kentucky corporation, and has its residence and principal office in the federal judicial district in which this complaint is brought.

V

Plaintiffs bring this suit to enjoin, set aside, and annul a certain corrected order entered by the Interstate Commerce Commission on the 8th day of May, A. D., 1944, in a proceeding known as "Docket No. 29000, Kentucky Intrastate Fares", instituted by the Interstate Commerce Commission by its order of July 10, A. D., 1943, pursuant to a petition theretofore filed with it by certain railroad companies, operating as common carriers in the state of Kentucky, among which was the Louisville and Nashville Railroad Company, as aforesaid. A copy of said corrected order of the Interstate Commerce Commission, dated May 8, 1944, is attached hereto as a part hereof, marked Exhibit A.

#### VI

In addition to Louisville and Nashville Railroad Company, the other parties on whose petition the corrected order of the Interstate Commerce Commission of May 8, 1944, was made, are The Chesapeake and Ohio Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; The Nashville,

Chattanooga & St. Louis Railway; and Southern Railway Company. These railroads will be referred to individually hereinafter as L. & N., C. & O., C. N. O. & T. P., G. M. & O., I. C., N. C. & St. L., and Southern, respectively, and collectively as Kentucky railroads.

#### VII

By the corrected order of the Interstate Commerce Commission, dated May 8, 1944, mentioned hereinbefore, the Kentucky railroads are notified and required to establish on or before July 1, 1944, certain minimum fares for the transportation of persons in railway coaches between points in the state of Kentucky over routes wholly within the boundaries of said state, and the said minimum fares, which are required to be established by said order, are higher ifol. 2222], than the fares from and to the same points over the same routes, which now apply, and which have been in effect with little or no change since February 10, 1942. The differences between the present fares and the minimum fares which the Kentucky railroads are required to estabhish by said corrected order vary, but for the most part the minimum required to be established exceed the present fares by thirty-three and one-third per cent (331/3%). the Kentucky intrastate passenger coach fares are increased, as required by said corrected order, the gross revenues of the Kentucky railroads will be increased in the aggregate by more than Five Hundred Thousand Dollars (\$500,000) per annum, based on the present amount of passenger coach travel within the state of Kentucky, and the said increase, plus the federal tax thereon, will have to be paid by the Kentucky intrastate coach passengers.

# VIII

The establishment of the increased passenger coach fares, required by the corrected order of the Interstate Commerce Commission of May 8, 1944, would be contra to, and in violation of, the opinion, findings and orders of the Railroad Commission of Kentucky, dated May 31, 1943, in a proceeding before that body, known as Suspension Docket No. 29, Increased Passenger Fares and Charges. A copy of such opinion, findings, and orders of the Kentucky Commission is attached hereto as a part hereof, marked Exhibit B. Saidopinion, findings and orders of the Kentucky Commission,

dated May 31, 1943, have not been modified or set aside, and are presently in effect.

#### IX

For many years prior to 1936 the basic interstate passenger coach fare of Class I American railroads was 3.6 cents per passenger-mile but many of these railroads published and maintained lower interstate fares. Beginning with December 1, 1933, and continuing through November 14, 1937, most of the railroads operating in the territory south of the Ohio and Potomac Rivers and east of the Mississippi River, and including the L. & N., C. & O. (Winchester to Louisville, Ky., inclusive), C. N. O. & T. P., N. C. & St. L., and Southern, published and maintained an interstate passenger coach fare of 1.5 cents per passenger-mile for oneway trips, and a 10 per cent lower fare, or 1.35 cents per passenger mile, for round-trips. During this same period other southern railroads, including G. M. & O. and I. C., maintained an interstate passenger coach fare of 2 cents per passenger-mile.

X

In a proceeding known as Docket 26550, Passenger Fares and Surcharges, decided February 28, 1936, and reported in 214 ICC 174, the Interstate Commerce Commission found that the basic fare of 3.6 cents per passenger-mile [fol. 2223] on interstate passenger coach travel was, and for the future would be, unreasonable to the extent that it exceeded 2 cents per passenger-mile. In the same proceeding, at page 257, the Commission found that the interstate coach fares then being maintained and charged by certain southern railroads, including some of the Kentucky railroads named herein, of 1.5 cents one-way, and 1.35 cents round-trip, were not unreasonable or otherwise unlawful. Pursuant to the findings and orders in Passenger Fares and Surcharges, supra, the basic interstate coach fare was reduced from 3.6 cents to 2 cents per passenger-mile on June 1, 1936, and remained on that basis until February 10, 1942, when it was increased to 2.2 cents per passenger-mile. The increase of 10 per cent in the interstate passenger coach fares was authorized by the Interstate Commerce Commission in an order, dated January 21, 1942, and entered in a proceeding known as Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942, 242 ICC 545. This increase was designed to take care of increased expenses of the railroads incident to the war period and is limited to the duration of the war and six months thereafter. No change has been made in the basic interstate passenger coach fare since February 10, 1942.

#### XI

Pursuant to the findings of the Interstate Commerce Commission in Passenger Fares and Surcharges, 214 ICC 174, certain southern railroads, including L. & N., C. & O. (Winchester to Louisville, inclusive), C. N. O. & T. P., N. C. & St. L., and Southern, continued to charge interstate passenger coach fares of 1.5 cents one-way and 1.35 cents round trip, to and including November 14, 1937. Effective November 15, 1937, these fares were increased to 2 cents one-way and 1.8 cents round trip, which fares were maintained to and including January 14, 1939. Effective January 15, 1939 said fares were again reduced to 1.5 cents oneway and 1.35 cents round-trip, and remained on that basis to and including February 9, 1942. Effective February 10, 1942 said fares were increased 10 per cent pursuant to Ex Parte 148, Increased Railway Rates, Fares and Charges, 242 ICC 545, and thereby became 1.65 cents one-way and 1.485 cents round-trip. No further changes were made in said fares until October 1, 1942, at which time they were increased to 2:2 cents one-way and 1.98 cents round-trip, which fares are still in effect.

#### XII

Prior to October 1, 1942 the Kentucky railroads generally maintained and charged the same coach fares on Kentucky, intrastate traffic as on interstate traffic. One exception to this general rule was that the G. M. & O. and I. C. voluntarily maintained a round-trip intrastate passenger coach fare of 1.5 cents for about two years prior to February 10, [fol. 2224] 1942, and 1.65 cents thereafter, as compared with a round-trip interstate coach fare of 2 cents prior to February 10, 1942 and 2.2 cents thereafter. Another exception was that the C. & O. on its Big Sandy Division, Ashland to Elkhorn City, Ky., including branches, voluntarily maintained an intrastate passenger coach fare of 1.65 cents one-way and 1.25 cents round-trip, as compared with 2.2 cents on interstate travel.

#### XIII

When the Kentucky railroads increased their interstate coach fares from 1.65 cents to 2.2 cents one-way, and from 1.485 cents to 1.98 cents round-trip, on October 1, 1942, they did not undertake to make any corresponding increases in the Kentucky intrastate passenger coach fares, but on or about October 20, 1942, said railroads filed with the Railroad Commission of Kentucky certain tariff schedules to become effective December 1, 1942, designed to raise the Kentucky intrastate passenger coach fares to the level of the corresponding interstate fares. As explained hereinbefore, these increases vary, but generally they amount to 331/3 per cent. No increases, however, were then proposed, or have since been proposed, in the intrastate passenger coach fare of 1.65 cents one-way and 1.25 cents round-trip on the Big Sandy Division of the C. & O.

#### XIV

Following the filing of the tariff schedules containing increases in the Kentucky intrastate fares to become effective December 1, 1942, protests against such increases were received by the Railroad Commission of Kentucky from the Office of Price Administration and Price Administrator of the United States, and various citizens of Kentucky. Acting upon these protests the Kentucky Commission suspended the operation of said schedules pending a hearing and investigation as to their lawfulness. Said hearing was held by the Kentucky Commission at Frankfort, Ky., on May 14, 1943, and on May 31, 1943 the Commission issued its opinion, findings and orders in said proceeding. namely, Suspension Docket No. 29, Increased Passenger Fares and Charges, hereinbefore men'ioned. In said report, attached hereto as Exhibit B, certain proposed in creases in the intrastate fares for parlor and sleeping cartravel were found justified, but the proposed increases in the intrastate fares for passenger coach travel were found not justified and the schedules containing such increases were ordered canceled.

#### XV

By petition dated June 24, 1943, the Kentucky railreads prayed the Interstate Commerce Commission to institute an investigation under the provisions of the Interstate Commerce Act, as amended, to determine whether the refusal of the Kentucky Railroad Commission to authorize [fol. 2225] or permit increases in Kentucky intrastate passenger coach fares causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. Pursuant to said petition the Interstate Commerce Commission did institute said investigation by its order of July 10, 1943, and said proceeding was designated as Docket 29000, Kentucky Intrastate Fares.

#### XVI

Hearings were held in *Docket 29000*, *Kentucky Intrastate Fares*, before an examiner of the Interstate Commerce Commission at Frankfort, Ky., on September 8 and 9, 1943, at which evidence was heard in the aforesaid proceeding and a transcript of the testimony and record was made by the Official Reporter of the Commission.

#### XVII

After the taking of such evidence, and hearing counsel on brief and argument, the Interstate Commerce Commission did on March 25, 1944, issue its report and findings in said proceeding, and in similar proceedings involving intrastate fares in the states of Alabama, North Carolin: and Tennessee, wherein it made the following general findings:

- 1. The interstate one-way and round-trip coach fares now in effect to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee, and the interstate round-trip fares applicable in sleeping and parlor cars now in effect to, from, and through points in Alabama and Tennessee, are just and reasonable.
- 2. The intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain exceptions hereinbefore referred to and not here in issue, and the intrastate round-trip fares applicable in-sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding fares applicable interstate and intrastate gen-

erally throughout southern territory, except in the several States mentioned in this finding.

- 3. The conditions affecting the one-way and roundtrip transportation of passengers in coaches within these four States, and the round-trip transportation of passengers in sleeping and parlor cars within Alabama and Tennessee, intrastate on the one hand, and interstate to, from, and through those respective States on the other, are substantially similar.
- 4. Interstate passengers in these States travel in the same trains and generally in the same cars with intrastate passengers, but are forced to pay higher fares than the intrastate passengers for like services, to the undue and unreasonable advantage and prefer-[fol. 2226] ence of the intrastate passengers and the undue and unreasonable disadvantage and prejudice of the interstate passengers.
- 5. Respondents' revenues under the lower intrastate fares are less by at least \$725,000 per annum in Alabama, \$500,000 in Kentucky, \$525,000 in North Carolina, and \$525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service.
- 6. The maintenance of intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, and of intrastate round-trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, to the extent that such fares are on a lower level than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce; and this unlawfulness should be removed by increasing the aforesaid intrastate fares in the respective States to the level of the corresponding

interstate fares contemporaneously maintained by respondents to, from and through such States; provided, that the aggregate charge made by any of respondents for the intrastate transportation in any of the States shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondent for interstate transportation to, from, or through such State.

The findings just quoted were made subject to the provisions of the paragraph quoted below:

The foregoing findings are without prejudice to the right of the authorities of the affected States, or of any interested party, to apply for modification thereof as to any specific intrastate fare on the ground that such fare is not related to interstate fares in such a way as to contravene the provisions of the Interstate Commerce Act.

In its opinion, the Commission made no order, but stated:

In accordance with our practice in such proceedings, we shall leave to respondents and the respective State Commissions the matter of adjusting the intrastate fares to conform to these findings. If this is not accomplished within 30 days from the service of this report, consideration will be given to the entry of an appropriate order.

[fol. 2227] A complete copy of said opinion and findings is filed herewith as a part hereof, marked Exhibit C.

#### XVIII

On or about April 25, 1944, plaintiffs herein filed with the Interstate Commerce Commission their petition for reopening of Docket. 29000, Kentucky Intrastate Fares, for reargument and reconsideration, but by its order dated May 8, 1944, the Interstate Commerce Commission denied said petition. A copy of said order is attached hereto as a part hereof, marked Exhibit D.

#### XIX

Plaintiffs are precluded from filing additional petitions for reopening and for reconsideration of the findings and

orders in *Docket 29000*, Kentucky Intrastate Fares, by the Interstate Commerce Commission's Rules of Practice, and particularly by Rule 101(f) which reads as follows:

Successive petitions on same grounds, not entertained.—A successive petition under subdivision (d) of this rule filed by the same party or parties, and upon substantially the same grounds as a former petition, which has been considered and denied by the entire Commission, or by an appropriate appellate division, will not be entertained.

# XX

The hearing in *Docket 29000*, *Kentucky Intrastate Fares*, held at Frankfort, Ky., on September 8 and 9, 1943, was conducted by Examiner C. E. Stiles, of the Interstate Commerce Commission, and said examiner on or about December 10, 1943, issued a proposed report in which he made the recommendations set forth below:

Upon these facts it is recommended that the Commission find that the intrastate rates imposed by authority of the State of Kentucky have not been shown to cause any undue or unreasonable advantage, preference or prejudice as between persons of localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand.

Upon the facts found it is recommended that the Commission find that the intrastate fares herein considered, imposed by State authority, do not cause any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.

An order discontinuing the proceeding should be entered.

A complete copy of the examiner's report is attached hereto as a part hereof, marked Exhibit E.

[fol. 2228] XXI

At the time Docket 29000, Kentucky Intrastate Fares, was decided there was a vacancy on the Interstate Com-

merce Commission and only ten commissioners participated in the decision. Seven of these commissioners, including two who did not hear the oral arguments, joined in the majority report. A dissenting opinion was written by Commissioner Splawn and concurred in by Commissioners Aitchison and Mahaffie, and is heretofore filed as a part of Exhibit C. The opening paragraph of said opinion reads as follows:

In my judgment the decision of the majority on the evidence in these proceedings goes beyond our lawful power under section 13(4). This view, I think, finds full support in several decisions by the Supreme Court of the United States in which the Court has had occasion to review some of our reports and orders under that section.

## XXII

The opinion of the majority in Docket 29000, Kentucky Intrastate Fares, does not include a finding of undue prejudice or discrimination as between localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand.

#### IIIXX

Kentucky intrastate railway coach fares now average about 10 per cent higher than the corresponding bus fares. If these coach fares are increased as required by the Interstate Commerce Commission's corrected order of May 8, 1944, they will exceed the bus fares by more than 40 per cent.

### XXIV

The corrected order herein sought to be enjoined, set aside, and annulled provides only for minimum intrastate fares within the State of Kentucky and there is nothing in said order to prevent the Kentucky railroads from publishing and collecting fares higher than those applicable on impression of Kentucky.

#### XXV

Plaintiffs allege, as a matter of law, that the corrected order of the Interstate Commerce Commission of May 8, 1944, which they seek herein to have enjoined, set aside,

and annulled, constitutes an unwarranted and wholly unjustified invasion of the sovereignty of the Commonwealth of Kentucky in that it exceeds the powers granted to the Federal Congress by the Commerce Clause of Section 8 of Article I of the Constitution of the United States, and that said order contravenes the Fifth and Tenth Amendments of said Constitution.

[fol. 2229]

XXVI

Plaintiffs allege, as a matter of law, that there is no evidence to support the finding, set forth hereinbefore under Paragraph XVII, Finding 1, that the interstate one-way and round-trip coach fares now in effect to, from and through points in Kentucky, are just and reasonable. The evidence shows that the present basic interstate coach fare of two cents per passenger-mile was prescribed by the Interstate Commerce Commission as a maximum fare in 1936, and that the Kentucky railroads are now enjoying unparalleled prosperity and are handling record-breaking amounts of freight and passenger traffic.

### XXVII

Plaintiffs allege, as a matter of law, that the finding set forth hereinbefore under Paragraph XVII, Finding 2, that the Kentucky intrastate coach fares are lower than the corresponding interstate and certain intrastate coach fares in southern territory is not material to the issues herein. The mere existence of a disparity between rates on intrastate and interstate traffic does not warrant the Interstate Commerce Commission in prescribing intrastate rates.

# XXVIII

Plaintiffs allege, as a matter of law, that there is no evidence to support the finding, set forth hereinbefore under Paragraph XVII, Finding 3, that the conditions affecting the transportation of persons in coaches within Kentucky, intrastate, on the one hand, and interstate to, from and through Kentucky, on the other, are substantially similar.

## XXIX

Plaintiffs allege, as a matter of law, that there is no evidence to support the finding set forth hereinbefore under Paragraph XVII, Finding 4, that the Kentucky intrastate

coach fares result in undue preference of intrastate passengers and undue prejudice of interstate passengers. No interstate passenger testified at the hearing concerning such alleged preference and prejudice.

#### XXX

Plaintiffs allege, as a matter of law, that there is no evidence to support the finding, set forth hereinbefore under Paragraph XVII, Finding 5, that the traffic moving under the Kentucky intrastate fares is not contributing its fair share of the revenues required to enable the Kentucky railroads to render adequate and efficient railroad service. The Kentucky railroads did not present a cost study covering their Kentucky intrastate passenger operations. The evidence shows that the earnings of the Kentucky railroads from their passenger operations have increased tremendously during the war period as compared with the prewar period.

[fql. 2230] XXXI

Plaintiffs allege, as a matter of law, that there is no evidence to support the findings set forth hereinbefore under Paragraph XVII, Finding 6, that the Kentucky intrastate coach fares cause undue preference of persons in intrastate commerce, or undue prejudice against persons in interstate commerce, or unjust discrimination against interstate commerce. No interstate passengers appeared at the hearing and complained of the Kentucky intrastate fares. A witness for the Kentucky railroads testified at page 34 of the transcript that said railroads are not in need of additional revenue. The evidence clearly shows that during 1942 and 1943 the Kentucky railroads have had tremendous increases in their freight and passenger traffic, and in their revenues accruing therefrom.

# XXXII

Plaintiffs allege, as a matter of law, that the defects in findings, enumerated hereinbefore under Paragraphs XXVI to XXXI, inclusive, will not be cured by the so-called saving clause set forth hereinbefore under Paragraph XVII, immediately following Finding 6, and that said saving clause would require intrastate passengers to go to the Interstate

\*Commerce Commission to get back what that Commission should never have taken over.

#### XXXIII

Plaintiffs allege, as a matter of law, that the findings of the Interstate Commerce Commission are inadequate to support the corrected order herein sought to be enjoined, set aside, and annulled.

### XXXIV

Plaintiffs allege, as a matter of law, that the corrected order of the Interstate Commerce Commission of May 8, 1944, requiring increases in Kentucky intrastate fares, is in contravention of the stabilization program of the federal government as embodied in the Emergency Price Control Act of 1942 (Public Law 421, 77th Congress), the Act of October 2, 1942 (Public Law 729, 77th Congress), the President's Executive Orders 9250 of October 3, 1942, and 9328 of April 8, 1943.

# XXXV

If the corrected order herein sought to be enjoined, set aside, and annulled becomes effective innumerable citizens of Kentucky would suffer immediate and irrevocable loss and damage, in that they would have no adequate remedy at law for recovering from the Kentucky railroads the increases in transportation charges, which increases in the aggregate amount to more than Five Hundred Thousand Dollars (\$500,000) per annum, exclusive of the federal taxes thereon.

[fol. 2231] Wherefore, having exhausted their administrative and legal remedies, plaintiffs pray:

1. That process may issue against the defendant, United States of America, by delivering a copy of the summons and of the petition to the United States Attorney for the Western District of Kentucky, by sending a copy of the summons and of the petition by registered mail to the Attorney General of the United States at Washington, D. C., and by sending a copy of the summons and of the petition by registered mail to the Secretary of the Interstate Commerce Commission at Washington, D. C.

- 2. That the court suspend temporarily the corrected order of the Interstate Commerce Commission, dated May 8, 1944, and effective July 1, 1944, in order that plaintiffs and the general public within the State of Kentucky might not suffer irreparable loss and injury.
- 3. That a three-judge court be assembled, as required by statute, and that a hearing be held as early as convenient to the end that irreparable damage to plaintiffs and the citizens of Kentucky may be prevented by the granting of a temporary restraining order and an interlocutory injunction.
- 4. That an interlocutory injunction, in addition to a temporary stay of the Commission's order, be granted restraining the enforcement and execution of said corrected order of the Interstate Commerce Commission.
- 5. That a permanent injunction be granted restraining the enforcement, operation and execution of said corrected order of the Interstate Commerce Commission.
- 6. That the corrected order of the Interstate Commerce Commission, dated May 8, 1944, and set forth in Exhibit A hereof, be set aside and annulled.
- 7. That the court make such other and further orders as are meet and proper in the premises, and plaintiffs will ever pray.
  - Eldon S. Dummit, Attorney General of Kentucky, State Capitol, Frankfort, Kentucky. M. B. Holifield, Assistant Attorney General of Kentucky. State Capitol, Frankfort, Kentucky, Attorneys for Plaintiffs.
- J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Of Counsel.

[fols. 2232-2234] Duly sworn to by Frank L. McCarthy. Jurat omitted in printing.

[fol. 2235]

EXHIBIT "B" TO PETITION

# Railroad Commission of Kentucky

# Suspension Docket No. 29

# Increased Passenger Fares and Charges

Submitted May 14, 1943. Decided May 31, 1943

- 1. Proposed increases in coach fares found not justified.
- 2. Proposed increases in parlor and sleeping car fares found justified.

L. L. Oliver and W. A. Northcutt for respondents.

John A. Bliss, Office of Price Administration, for Prentiss M. Brown, Price Administrator, and James F. Byrnes, Director of Economic Stabilization, protestants.

Henry M. Johnson, for himself and other protesting train

riders.

M. B. Holifield, Assistant Attorney General, for Commonwealth of Kentucky.

J. E. Marks, for Railroad Commission of Kentucky.

# Report of the Commission

By schedules filed to become effective December 1, 1942, the principal Class I railroads operating within the state proposed substantial increases in their intrastate passenger fares and charges. Upon protest of the Office of Price Administration and of the Price Administrator of the United States, and various citizens of Kentucky, the operation of these schedules was suspended for the statutory period of 210 days until June 28, 1943. Hearing was held by the full commission at the commission's offices in Frankfort on May 14, 1943, following which oral arguments were heard and the proceeding submitted for decision.

## Summary of Proposed Changes

Appendix A hereto shows the present and suspended coach fares in cents per mile. From this appendix it will be observed that the Louisville & Nashville Railroad; Cincinnati, New Orleans and Texas Pacific Railway; Southern Railway; Nashville, Chattanooga and St. Louis Railway; and the Chesapeake and Ohio Railway (Winchester to

Louisville, inclusive), hereinafter called L. & N., C. N. J. & T. P., Southern, N. C. & St. L., and C. & O., respectively, propose to increase their one-way fares from 1.65 to 2.2 cents per mile, and their round-trip fares from 1.485 to 1.98 cents per mile. This group of carriers operated an average of 2,134 miles of road in passenger service in 1942, which was approximately 65 per cent of all the passenger [fol. 2236] mileage of the Class I railroads. Under the suspended schedules both the one-way and round-trip coach fares of these roads would be increased 33½ per cent.

Appendix A further shows that the Illinois Central Railroad and the Gulf, Mobile and Ohio Railroad, hereinafter called I. C. and G. M. & O., operated 607 miles of road in passenger service in 1942, or about 18 per cent of the total. These roads now have a fare of 2.2 cents per mile one-way but under the suspended schedules their round-trip fares would be increased from 1.65 to 1.98 per mile, or 20 per cent.

The C. & O. operated 247 miles of road in passenger service on its Big Sandy line in 1942, or about 8 per cent of the state's total. On this line it maintains a one-way fare of 1.65 cents and a round-trip fare of 1.25 cents per mile. These are so-called motor competitive fares and carry an expiration date but they have been continued in effect for several years. Since the hearing the expiration date has been extended from June 30 to December 31, 1943.

The Catlettsburg to Covington and the Ashland to Winchester Les of the C. & O., together with the Norfolk and Western Railway and Tennessee Central Railway, hereinafter called N. & W. and Tenn. Cent., operated 279 miles in passenger service in 1942, or about 9 per cent of the total. This group now charges 2.2 cents for both one-way and round-trip fares and no changes are proposed herein.

All of the fares mentioned above, and those named here-inafter, unless otherwise specified, include the 10 per cent increase, which became effective February 10, 1942 pursuant to orders of the Interstate Commerce Commission in Ex Parte 148, 248 ICC 545, and the corresponding order of the Kentucky Commission in Docket No. 639, but do not include the federal tax of 10 per cent.

Specific illustrations of the proposed increases between representative points in Kentucky will be found in Appendix B heretor. The information shown in the appendices has been compiled from the exhibits of record and from the tariffs of respondents on file with our commission.

The increases proposed in the first class fares, good in sleeping and parlor cars, are relatively minor. Certain of the carriers maintain a round-trip first class fare of 2.475 cents per mile good for 30 days and 2.75 cents per mile good for six months. Under the suspended schedules a uniform round-trip fare of 2.75 cents per mile would be applicable for three months. Stated differently, the present 30-day round-trip fare would be increased approximately 10 per cent, without any change in the round-trip fare for six months, except that the time limit would be reduced to three months. The one-way first class fares are now 3.3 cents per mile on all railroads, and no changes therein are proposed in the suspended schedules.

# [fol. 2237] Position of Parties

The burden of justifying the increases proposed herein was assumed by representatives of the Southern Railway System who announced that their testimony and evidence was presented on behalf of an of the respondents. Counsel for the L. & N. assisted counsel for the Southern in presenting respondents' case. The Federal Price Administrator and Federal Director of Economic Stabilization were represented by counsel who participated in the examination of witnesses and presented an oral argument in opposition to the proposed increases but offered no direct evidence. A similar position was taken by Mr. Henry M. Johnson on behalf of himself and other train riders. The Commonwealth was represented by Hon. M. B. Holifield, Assistant Attorney General.

Since a suspension proceeding is in the nature of a general investigation our traffic adviser submitted an exhibit showing various passenger traffic data of Kentucky railroads compiled from respondents' annual reports to our commission for the years 1935 to 1942, inclusive.

The various exhibits and testimony in support thereof will be discussed herein under appropriate headings.

# History of Interstate Passenger Fares

In Passenger Fares and Surcharges, 214 ICC 174 (decided February 28, 1936) the Interstate Commerce Commission conducted a general investigation on its own motion of all interstate passenger fares and charges throughout

the United States. At page 186 of the report therein the commission said

"The basic fare prior to the war was not uniform throughout the count, but averaged about 2.5 cents. Beginning in 1918, with few exceptions, it became uniform at 3 cents, and in 1920, following Increased Rates, 1920, 58 ICC 220, it was increased to 2.6 cents."

The report in the above styled case further shows that at the time the investigation was concluded in 1935 most of the railroads operating in the eastern district were charging the basic fare of 3.6 cents per mile, whereas most of the southern railroads and western railroads were charging only 1.5 cents and 2 cents, respectively, for coach fares, and something less than the basic fare in parlor and sleeping cars. These voluntary reductions by the southern and western railroads were designed to meet competition of motor traffic.

Notwithstanding the fact that the railroads generally were losing money on their passenger traffic the ICC in Passenger Fares and Surcharges, supra, ordered the basic fare of 3.6 cents reduced to 2 cents per mile in coaches, and 3 cents per mile in parlor and sleeping cars, and also ordered the elimination of the surcharge then applicable [fol. 2238] on parlor and sleeping car traffic. In reaching these conclusions the commission commented on the fact that the value of the service, as well as the cost of the service, is an important factor in judging the reasonableness of the fare structure. In support thereof it quoted at page 233 from Smythe v. Ames, 169 U. S. 466, 547, as follows:

"What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of the public highway than the services rendered by it are reasonably worth."

The 2-cent basic coach fare thus prescribed by the ICC in 1936 is still in effect, except that it has been increased 10 per cent for the duration of the war and six months thereafter, under Ex Parte 148, supra. The decision in Passenger Fares and Surcharges, supra, required substantial re-

ductions in fares in the eastern district but most of the coach fares in the south and west were not affected by the orders therein because they were already 2 cents or lower.

Shortly after the decision in Passenger Fares and Surcharges, supra, that is, on November 15, 1937, the southern railroads increased their fares from 1.5 to 2 cents. The 2-cent fare remained in effect for 14 months, or until January 15, 1939, when it was again voluntarily reduced to 1.5 cents. On February 10, 1942 the southern railroads increased their state and interstate fares to 1.65 cents to correspond with the 10 per cent increase in Ex Parte 148. On October 1, 1942 the southern railroads further increased their interstate fares from 1.65 cents to 2.2 cents, which is the basic fare approved by the ICC in 1936, as modified by the 10 per cent increase of February 10, 1942. This increase of October 1, 1942, was protested by the Office of Price Administration but the ICC declined to suspend the schedules.

At present it appears that the interstate coach fares throughout the United States are on basis of 2.2 cents, although certain railroads have somewhat lower round-trip fares. In the south the round-trip fares are 10 per cent less than the one-way fares.

# Kentucky Intrastate Fares

Generally speaking, the Kentucky intrastate fares have been maintained on the same basis as the corresponding interstate fares. The C. & O., an eastern railroad, has generally followed the eastern basis. The I. C., which operates both in the west and the south, has generally followed the western basis. The G. M. & O. is parallel to the I. C., and has generally followed the fares of the I. C. The L. & N., N. C. & St. I. and Southern Systems have generally followed the southern railroads in the matter of passenger fares.

[fol. 2239] Just prior to the decision in Passenger Fares and Surcharges, supra, the C. & O. charged 3.6 cents, the I. C. and G. M. & O. 2 cents, and the L. & N., N. C. & St. L. and Southern Systems 1.5 cents within the state. Following the decision in Passenger Fares and Surcharges, supra, and also following the increase by the L. & N., N. C. & St. L. and Southern Systems, that is, early in 1938, all of the fares were on basis of 2 cents.

When the L. & N., N. C. & St. L. and Southern Systems again voluntarily reduced their fares to 1.5 cents on January 15, 1939, our commission in Docket No. 605 directed the I. C., G. M. & O. and C. & O. to show cause why their fares should not be reduced to the level maintained by the L. & N., N. C. & St. L. and Southern Systems. In support of its position the C. & O. showed that it was maintaining the 1.5 cent basis on its lines west of Winchester and south of Catlettsburg and that the fares on its other lines in Kentucky were being restored to the 2-cent basis after having been 2.5 cents for a period of 18 months under a supplemental decision in Passenger Fares and Surcharges, supra. It also contended that its coach service in Kentucky is superior to that of other lines. During the course of the investigation the I. C. and G. M. & O. voluntarily reduced their round trip fares to 1.5 cents. In the light of these concessions, and upon motion of the respondents, the proceeding was dismissed.

## Growth of Passenger Traffic and Revenues

Passenger traffic and the revenues therefrom within the state of Kentucky, as well as in the nation as a whole, have increased tremendously within the past two or three years. This is particularly true of 1942 over 1941 and there is reason to believe that 1943 will show a further increase over 1942. The data submitted by our own witness is summarized in Appendix C hereto. Passenger revenues earned by the L. & N., I. C., C. & O., C. N. O. & T. P. and Southern on their state and interstate traffic in Kentucky were \$4,182,411 in 1939, \$6,497,525 in 1941, and \$14,023,436 in 1942.

Passengers carried by the same railroads in Kentucky were 2,831,439 in 1938, 3,931,378 in 1941, and 6,633,604 in 1942. Passenger miles increased from approximately 208 million in 1938, to 370 million in 1941, and 724 million in 1942. The average number of passengers per car-mile (coach, parlor and sleeping cars) was 9.1 in 1938, 13.8 in 1941, and 22.3 in 1942. The average miles traveled per passenger has consistently increased from 66.1 in 1935 to 109.1 in 1942.

# Effect of Proposed Fares on Respondents' Revenues and Earnings

The record does not definitely show the extent to which respondents' revenues and earnings would be increased by [fol. 2240] the suspended fares but certain estimates may be made from the exhibits presented at the hearing. In 1942 the L. & N.'s revenues from intrastate passenger traffic amounted to \$967.966. This included revenues from parlor and sleeping car traffic on which the proposed increases are small, and also from members of the armed forces traveling on furlough, for which no increases are herein proposed. On long haul over-night traffic the record indicates that respondents' revenues from parlor and sleeping car services are substantially as great as from coach services, due largely to the higher fares per mile. It is well known, however, that on short haul intrastate traffic parlor and sleeping car services are not used to any appreciable extent. Furthermore, on many of its lines in Kentucky the L. & N. does not even maintain such services.

While the proportion of traffic by the armed forces has greatly increased, it may be assumed that a very considerable portion of such travel is for the federal government and therefore subject to the same increases as proposed for the public. Some mention was made of land grant rates and fares which are but 50 per cent of the commercial rates and fares. There was no showing, however, that any of the railroads in Kentucky are subject to land grant reductions.

From all of the above we estimate that under the suspended schedules approximately \$750,000 of the L. & N.'s 1942 passenger revenues would be subject to an increase of 33½ per cent, and that such increase would amount to \$250,000 per year. For the other respondents, namely C. & O. (west of Winchester), C. N. O. & T. P., G. M. & O., I. C., N. C. & St. L. and Southern, we estimate that the increased revenues resulting from the increased fares would be \$150,000. In arriving at this estimate we have taken into consideration the shorter mileages of these carriers and also the smaller increases proposed by the I. C. and G. M. & O. Our estimate of the total increase in revenues from the proposed coach fares is therefore \$400,000 per annum, which may be either too high or too low, depending upon the volume of future passenger traffic.

In order to arrive at the cost of the proposed increases to the public it is necessary to add the federal transportation tax of 10 per cent. This tax would amount to \$40,000 and

makes the total \$440,000 per annum.

It is obvious, however, that the estimated increase in revenues of respondents will not mean a corresponding increase in their net earnings because a very large part of these increases would have to be paid over to the federal and state governments for income and excess profits taxes. Since these increases are to be added to earnings which are already quite high they would fall into the upper brackets and be subject to very high income and excess profit rates, [fol. 2241] There is some testimony in the record which indicates that as much as 80 per cent of the increases would have to be paid out by respondents for such taxes. If this be true then respondents would receive as net revenues approximately \$80,000, and the remainder of \$360,000 would be paid for taxes, principally to the federal government.

Respondents' Justification of Proposed Increases

Respondents rely largely upon the fact that the suspended basic coach fare of 2.2 cents and the basic sleeping and parlor car fare of 3.3 cents per mile are the same as approved by the ICC for interstate traffic and now in effect on such traffic throughout the nation. They also show that these basic fares are applicable on intrastate traffic in northern and western states.

Within the past few months these fares have been approved by the appropriate state commissions for intrastate application in Florida, Louisiana, Mississippi, South Carolina and Virginia. At the time of our hearing only one state, Alabama, had declined to approve them: In three other states, namely, Georgia, North Carolina and Tennessee, hearings had not been held or decisions had not been handed down.

Respondents contend that the maintenance of intrastate fares within the state of Kentucky on a lower basis than the interstate fares applicable from and to points just beyond the borders of the state constitutes unlawful discriminations against interstate traffic. They further contend that numerous interstate fares can be, and doubtless are being defeated by passengers purchasing tickets to destinations near the border at the lower intrastate fares, and then

purchasing additional tickets at such points for the re-

mainder of the trips at the interstate fares.

It is well established that interstate rates may not lawfully be reduced by a combination of interstate and intrastate rates. Baltimore and Ohio R. R. v. Settle 260 U. S. 166, 67 L. Ed. 189. This principle of law applies with equal force to passenger fares but as a practical matter it might be more difficult for the carriers to conform to the law with respect to such fares.

Respondents further contended that their costs of maintaining passenger traffic have been greatly increased since the beginning of the war period. They cite particularly the extra costs resulting from the expediting of troop-trains and shipments of war materials. Their operating representatives testified that they are leaving no stone unturned to render the best service possible to the government and to the public irrespective of the extra costs which they are now being called upon to bear.

Because of these extra costs and also because of increased taxes it is claimed that the increased revenues which they [fol. 2242] have received from the greatly increased passenger traffic have not been converted into corresponding net earnings. The record shows, however, that the principal respondents herein, namely, C. N. O. & T. P., I. C., L. & N., N. C. & St. L. and Southern, enjoyed substantial net operating revenues on their 1942 passenger traffic, both state and interstate, whereas these same respondents in the six years prior to 1942 incurred deficits on such traffic.

# Conclusions and Findings

Respondents herein, together with most of the other railroads of the nation, undoubtedly have made a notable contribution to the war effort by the services which they have rendered under the trying and difficult situations now confronting them. For the services they have contributed thus far and doubtless will continue to perform in the future, they are entitled to the commendation of all. creased revenues sought herein were vitally essential to the continuation of these efforts we would in all likelihood approve the proposed increases, just as we granted an increase of 10 per cent in respondents' fares in February 1942 under Docket 639, when it appeared that they were in urgent need of additional revenues. The record shows, however, that

by reason of the tremendous increases in freight and passenger traffic respondents' gross and net revenues are now on an exceedingly high level.

In passing upon the questions presented herein there are other factors which demand our most careful consideration. Not the least of these is the efforts of our federal government to stabilize our economic structure. As recently as April 8, 1943 our President issued Executive Order 9328, Paragraph 4, of which reads as follows:

"The attention of all agencies of the Federal Government, and of all State and municipal authorities, concerned with the rates of common carriers or other public utilities, is directed to the stabilization program of which this order is a part so that rate increases will be disapproved and rate reductions effected, consistently with the Act of October 2, 1942, and other applicable federal, state or municipal law, in order to keep down the cost of living and effectuate the purposes of the stabilization program."

The Act of October 2, 1942 referred to above and its accompanying Executive Order No. 9250, effective October 3, 1942, related to the stabilization of prices, wages, and salaries. With respect to the stabilization program Hon. Joseph B. Eastman, Director, Office of Defense Transportation, and member of the Interstate Commerce Commission, in his concurring opinion in Ex Parte 148, Report on Further Hearing, decided April 6, 1943, made the following significant statement (Sheets 40 and 41 of mimeographed report):

[fol. 2243] "The great areas of danger, in the endeavor to prevent inflation, are to be found, I fear, in farm prices and in the wages paid to workers. It is in those places that the fabric of prevention is most likely to be torn and an unravelling process begin. In safeguarding against these dangers, we cannot wisely leave out of consideration emotional and other psychological reactions. So long as the railroad industry, or any other great industry, is in war time making very large profits and such profits are in part dependent upon rates or price increases authorized since the war began, a situation exists which is more than likely to generate perilous reactions, whether real or purported,

of this character. If, as here, the basis for such reactions can be removed without injustice or serious financial detriment to the railroads, I am fully persuaded that it should be removed."

In the same opinion on Sheet 41 of the mimeographed report, Mr. Eastman had the following to say concerning the taxes of railroads arising out of increased rates and fares:

"The matter has another aspect, not so fundamental but yet of importance. A considerable number of the railroads are now paying in large amounts, not only income taxes, but also excess profits taxes. Public utility corporations are surely inappropriate mediums for collecting taxes of this character from the public which they serve. The fact that such taxes are collectible is always an incentive, also, to improvident or unnecessary spending."

In the present proceeding a representative of the Price Administrator and the Director of Economic Stabilization, both of which are arms of the federal government, protested against the proposed increases on the ground that they will have a disturbing effect upon the stabilization program. Since a very large proportion of the increases would be paid over to the federal government in the form of taxes, the views of these agencies of the government are entitled to serious consideration.

Our Kentucky Statutes provide that "At any hearing involving a rate increased or sought to be increased, the burden of proof to show that the increased or proposed increased rate is just and reasonable shall be upon the carrier." KRS 276.170 (201g-7). Our consideration of the evidence herein leads to the conclusion that respondents have not sustained the burden thus cast upon them. Their exhibits and testimony in support thereof relate principally to their entire operations both within and without Kentucky and includes the operation of several carriers, both large and small, which reach Kentucky but which have no intrastate passenger operations within the state. For example, [fol. 2244] the evidence includes data of the Baltimore and Ohio, Chicago, Indianapolis and Louisville, New York Central, and Pennsylvania, which reach only one Kentucky city, Louisville, and the Clinchfield which serves only Elkhorn

City. The N. & W. has only 5 miles of passenger operations in Kentucky and the fares of this road are not involved herein.

Only a small amount of evidence was offered with respect to the Kentucky operations of the respondents most vitally affected by the proposed changes in fares and charges. Although respondents undertook to show that over a period of years, that is from 1936 to 1942, inclusive, they had incurred an operating deficit from their passenger operations, they submitted no detailed figures to show how these alleged deficits were computed. In addition to passengers respondents transport on their passenger trains certain commodities, including mail, express, baggage, milk and cream. For aught that appeared of record their deficits, if any, may have been due to insufficient rates charged on such commodities.

All this evidence was available to respondents and could have been presented by them at the hearing. In *Interstate Circuit*, *Inc.*, v. *United States*, 306. U. S. 208, 226, the Supreme Court said:

"The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse."

Prior to F bruary 10, 1942 the L. & N., N. C. & St. L. and Southern Railway Systems had maintained their one-way fares within the state on basis of 1.5 cents per mile for approximately seven out of the preceding eight years. The maintenance of such fare during a period when passenger traffic was generally light creates a presumption that the present fare of 1.65 cents during a period of peak passenger traffic is not unreasonably low.

In reaching our conclusions herein we are not unmindful of the recent decision of the ICC in Ex Parte 148, on further hearing, wherein it was held that the 10 per cent increase on passenger fares, which became effective February 10, 1942, should not be eliminated. This point was stressed quite strongly by respondents at the hearing in support of their proposals here. The question before the ICC in that proceeding was whether the fares in effect when the stabilization program was created should be reduced, whereas here the question is whether fares existing at the time this program became effective should be increased. It is true that the ICC permitted increases in the southern interstate fares to become effective without suspension

on October 1, 1942 but that was prior to the passage of the Stabilization Act of October 2, 1942.

[fol. 2245] As previously shown, the increases in parlor and sleeping car fares herein proposed would not result in any appreciable increase in respondents' revenues. Furthermore, protestants raised no particular objections to these increases. Since these increases would place the intrastate parlor and sleeping car fares on the interstate level

we conclude that they should be approved. .

While the uniformity sought herein between the interstate and intrastate fares is desirable, uniformity alone is not a sufficient justification for the substantial increases proposed in the coach fares. The Interstate Commerce Commission has frequently held that an intrastate rate structure different from that of the adjacent interstate structure is not unlawful. Intrastate Class and Commodity Rates in Kentucky, 223 ICC 109, and cases cited therein.

For the reasons set forth herein we find:

1. That the suspended Schedules, in so far as they propose increases in the coach fares within the state of Kentucky, have not been shown to be just and reasonable.

2. That the saspended schedules, in so far as they propose changes in the parlor and sleeping car fares, are just and reasonable.

An appropriate order will be entered.

## Order

It appearing that by order dated November 23, 1942, the commission entered upon a hearing concerning the lawfulness of increased passenger fares and charges stated in the schedules described in said order, and suspended the operation of said schedules until June 28, 1943:

It further appearing that a full investigation of the matters and things involved has been made and that the commission on the date hereof, has made and filed a report? containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered that the respondents herein be and they are hereby notified and required to cancel said schedules, in so far as they have been found not justified, on or before June 28, 1943, upon notice to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in our rules of practice and that this proceeding be discontinued.

Frank L. McCarthy, Chairman, Jack E. Fisher, Commissioner, Mrs. John W. Langley, Commissioner.

Attest: Lucile Tobin, Secretary.

#### PPENDIX A

Present and Suspended Kentucky Intrastate Coach Fares of Class I Railroads, in cents per mile (Federal tax of 10 per cent not included)

	Miles of Road Operated in	One-w	ay Fares	Round-trip Fares		
	Passenger Service—1942	Present (cents)	Suspended (cents)	Present (cents)	Suspended (cents)	
Group 1						
L. & Nº R. R		1.65	2.2	1.485	1.98	
C.N.O. & T.P.Ry	198	1.65	2.2	1.485	1.98	
Sou. Ry	98	1.65	2.2	1.485	1.98	
N.C. & St.L.Ry	60	1.65	2.2	1.485	1.98	
C. & O. (1)	194	1.65	2.2	1 .485	1.98	
Total-Group 1	2,134	1.65	2.2	1.485	1.98	
Group 2			- 4 "			
I. C. R. R.	564	2.2	. NC	1.65	1.98	
G. M. & O. Ry		2.2	NC	1.65	1.98	
Total-Group 2	607	2.2	NC.	1.65	1.98	
Group 3				4 2		
C. & O. Ry. (2)	247	1.65	NC ·	1.25	NC	
Group 4				,		
C. & O. Ry. (3)	256	2.2	NC	2.2	NC .	
N. & W. Rv	. 5	2.2	· NC	2.2	NC	
Tenn. Cent. Ry	18	2.2	N.C.	2.2	NC	
Total-Group 4	279	2:2	. NC	2.2	NC	
Grand Total	3 267	. ,			1	

<sup>(1)—</sup>Winchester to Louisville, inclusive.

NC-No change in fares proposed.

Big Sandy Line—Catlettsburg and South. Catlettsburg to Covington and Ashland to Winchester, inclusive.

[fol. 2247]

#### APPENDIX B

#### Present and Suspended Kentucky Intrastate Coach Fares between Representative Points

(Federal tax of 10 per cent not included)

	Retween And Railroad		One	way	Round-trip		
Between	And	Railroad	Present	Sus- pended	Present	Sus- pended	175
Louisville	·Elizabethtown.	L & N	\$ 72	\$ 95	\$1.30	\$1.75	
	. Bowling Green		1.95	2.53	3.55	4.60	
Louisville.	.Shelbyville	L& N	61	:77	1.10	1.40	
	Frankfort		:99	121:32	1.80	2.40	
Louisville.	- Lexington	*L& N	1.45	1.87	2.65	3.40	
Lexington.	Jackson	L& N	1.55	2 27	2.80	4.10	,
	.Hazard		2,30	3.23	4.15	5.85	
	.Richmond			.84	1 20	1.55	*
	.Corbin .:		1.80	2.35	3.25	4 .25	
	. Harlan		3.10	4.03	5.60	7:30	
	.Lawrenceburg.		1.10	1.39	. 2 .00	2.55	
Louisville.	Harrodsburg	Sou. Ry	1.45.	1.87	2.65	3:40	*
	.Danville		1.60	2.05	2.90	3.70	
	. Williamstown .		77	.95	1.40	1.75	
Lexington	. Danville	CNO & TP	66	.81	1.20	1.50	
Lexington	.Somerset	CNO & TP	1.30	1.76	2.35	3 20	
Lexington.	Stearns	CNO & TP.	1.85	2.46	3 35	4.45	
Louisville	.Greenville	I C.	2.97	NC	4.46	5 35	
	. Dawson Spring		. 3 69	NC	5.50	6 65	
	Paducah			NC	7.48	9 05	
	Mayfield			NC	8-25	9.90	
	Lexington			44	.60	.80	
	.Frankfort			1.06	. 1.55	2 15	
	Louisville			2.27	3.15	4:10	
* * *							

NC-No change.

[fols. 2248-2278]

#### APPENDIX C

Statistics of Kentucky Intrastate and Interstate Operations of the Five Principal Class I Railroads within the State, namely, L. & N., I. C., C. & O., C. N. O. & T. P. and Southern Railway, for the years shown.

Year	Column I  Passenger Revenues	Column II Passengers Carried	Column III Passenger Miles (Thousands)	Column IV Passenger *Car-miles (Thousands)	Average Passengers Per car-mile
1935 1936		3,338,589 3,801,320	220,720 265,370	25,302 23,695	8.7
1937	4:318,238	3,923,151 2,831,439	279,255 208,349	24,181 22,903	9.1
1939 1940 1941	4,182,411 4,493,479 6,497,525	2,925,089 3,065,609 3,931,378	230, 594 256 \ 054 369 \ 508	22,885 24,165 26,868	10 8 10 6 13 8
1942	14,023,436	6,633,604	723,909	-32,417	22 3

<sup>\*</sup> Applies also on C. & O. trains. † Applies also on L. & N. trains.

#### APPENDIX C-Continued

Year	Column VI Average Miles per Passenger (Col. III + II)	Column VII Average Revenue per Mile (Col. I+II)	Column VIII  Average Revenue per Passenger (Col. I + II)	Column IX L. & N. R.R. Intrastate Pas- senger Revenues
619		(Cents)		
1935	66.1	1.790	\$1.18	
1936	69.8	1:.780	1.24	\$733,479
1937	71.2	1.821	1.30	713.672
1938	73.6	2 073	1.52	562.348
1939:	78.8	1 814	107 1:43	519.726
1940	83.3	1.755	1.47	499.074
1941	94.0	1.758	1.65	538,046
1942	109.1	1.937	2.11	967,966

<sup>\*</sup> Includes coaches, sleeping and parlor cars.

[fol. 2279] EXHIBIT "E" TO PETITION

Interstate Commerce Commission

No. 29000

## Kentucky Intrastate Fares

Submitted

-Decided

Passenger fares and charges required by State authority to be maintained by respondents within the State of Kentucky found not shown to be unduly prejudicial to persons or places in interstate commerce, and found not unjustly discriminatory against interstate or foreign commerce. Proceeding discontinued.

L. L. Oliver, Edward D. Mohr, and James B. Gray. for respondents.

Hubert Meredith and M. B. Holifield, for Commonwealth. of Kentucky; Frank L. McCarthy, Jack E. Fisher, Mrs. John W. Langley, and J. L. Marks for Railroad Commission of Kentucky; and M. D. Miller, George J. Burke, David F. Cavers, and Warren Price, Jr., for Acting Price Administrator, and Director of Economic Stabilization, protestants. Henry M. Johnson, protestant.

# Report Proposed by Examiner C. E. Stiles

This is an investigation instituted upon a petition filed by rail carriers operating in Kentucky to determine whether the refusal of the Railroad Commission of Kentucky to

authorize or permit the application to the transportation of passengers traveling intrastate in Kentucky of coach fares and charges corresponding to those established for interstate application on October 1, 1942, causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and to determine what fares and charges, if any, or what maximum or minimum or maximum and minimum fares and charges, shall be prescribed to remove such advantage, preference, prejudice, or discrimination, if any, as may be found to All common carriers by railroad operating within Kentucky subject to the jurisdiction of this Commission were made respondents, and the State of Kentucky was notified of this proceeding.

Rate History:—In Southern Passenger Association Territory, which generally speaking is that territory east of the Mississippi and south of the Ohio and Potomac Rivers, [fol. 2280] from June 15, 1914, to June 9, 1918, the basis of one-way coach fares was generally 2.5 cents per mile. On June 10, 1918, under an order of the Director General of Railroads, the fare was increased to 3 cents per mile. This fare remained in effect until August 25, 1920. From August 26, 1920, to November 30, 1933, the fare generally was 3.6 cents per mile. (7)

During 1932 and 1933 certain of the carriers operating in Southern Passenger Association territory experimented with fares lower than 3.6 cents in attempts to attract additional passenger business in competition with transportation by private automobiles and busses. For example from April 1 to November 30, 1933, experimental one-way fares of 2 cents per mile in coaches, were maintained by the Mobile and Ohio Railroad Company (now part of the Gulf, Mobile and Ohio Railroad Company), Louisville and Nashville Railroad Company, and The Nashville, Chattanooga & St. Louis Ra. way. During the same period the Southern Railway System lines were experimenting with coach fares of 1.5 cents per mile on certain portions of their lines. (8)

On December 1, 1933, most lines in Southern Passenger Association territory established experimental fares of 1.5 cents per mile in coaches, which remained in effect through November 14, 1937. However, a number of railroads kept their one-way coach fares at 2 cents per mile during this period, but met the 1.5-cent fares maintained by other roads where competition made that necessary. Among the lines which retained the 2-cent coach fare during this period were the Illinois Central Railroad Company, Mobile & Ohio, and the St. Louis-San Francisco Railway Company (J. M. Kurn and Frank A. Thompson, Trustees). The Chesapeake and Ohio Railway Company retained the 3.6-cent fare, (except that on its line between Louisville, Ky., and Winchester, Ky., it met the competitive fare of 1.5 cents) until June 1, 1936 on which date it was reduced to 2 cents. (8, 9)

In Passenger Fares and Surcharges, 214 I. C. C. 174, decided February 28, 1936, the Commission reviewed railroad passenger fares throughout the nation, and found the basic fares to be unreasonable. It prescribed maximum reasonable fares of 2 cents per mile, one way and round trip, in coaches, without prejudice to the maintenance of lower fares. The existing experimental fares in the South were found not unreasonable or otherwise unlawful. (16)

On November 15, 1937, the carriers that were maintaining the experimental coach fare of 1.5 cents increased the fare to 2 cents per mile, but restored the 1.5-cent fare on January 15, 1939. (16) Again, certain of the southern lines, including the Illinois Central, Mobile & Ohio, and St. Louis-San Francisco, retained the 2-cent fare basis, except in certain instances where it was necessary to meet the competitive fares. The Chesapeake & Ohio, however, on August 25, [fol. 2281] 1938, intreased its fares to 2.5 cents per mile, but on its Louisville-Winchester line met the competitive fare of 2 cents from August 25, 1938, to January 14, 1939, inclusive. On January 25, 1939, this respondent reduced its basic fare to 2 cents per mile. From January 15, 1939, to February 9, 1942, it maintained a fare of 1.5 cents per mile on its Louisville-Winchester line. (9, 16)

By its order of January 21, 1942, in Ex Parte No. 148, this Commission found that a nation-wide increase of 10 per cent in fares proposed by the railroads was necessary to enable the petitioners to continue to render adequate and efficient transportation service during the national emergency, and that the proposed increased fares would be reasonable, and lawful. See *Increased Railway Rates*, Fares, and Charges, 1942, 248 I. C. C. 545, 565, 566, where the foregoing findings were renewed and affirmed. (16, 17)

The reestablished coach fares of 1.5 cents remained in effect until February 10, 1942; on which date the 10 per cent increase in fares became effective. On that date fares of 1.5 cents became 1.65 cents, and fares of 2 cents became 2.2 cents. The Railroad Commission of Kentucky likewise approved an increase of 10 per cent on intrastate fares. (9, 10, 16)

Substantially all the carriers operating in Southern Passenger Association territory, including the respondents herein, during the summer of 1942 petitioned this Commission for authority to increase all lower fares for interstate one-way transportation in coaches to 2.2 cents per mile, thereby seeking to bring these fares up to the level prevailing generally throughout the rest of the United States. The authority sought was granted by order of August 1, 1942, modifying the original order in Ex Parte No. 148. Pursuant to this authority the lower fares were increased on October 1, 1942, to 2.2 cents. The fares as so increased are now in effect for interstate travel. (10, 11)

Effective October 1, 1942, respondents, and railroads generally throughout the country, established a uniform basis of interstate round-trip fares to dispute the round-trip fares constructed on various basic rates and with varied return limits which had previously been in effect. The round-trip coach fares so established are 180 per cent of the one-way coach fares of 2.2 cents, or 1.98 cents per mile, with a return limit of 3 months. (30, 31)

On or about October 1, 1942, upon request of the Government, the carriers established for both interstate and intrastate travel reduced round-trip coach fares on the basis of 1.25 cents per mile, available only to personnel of the Army, Navy, Marine Corps, Coast Guard, Women's Naval Reserves, Women's Army Auxiliary Corps, Women's Coast Guard Reserves, and Women's Marine Corps Reserves, [fol. 2282] traveling in uniform and at their own expense when on official leave, furlough, or pass; also to nurses, when not traveling in uniform, upon presentation of proper identification, and to personnel of the military forces of the allied nations. Respondents do not propose to increase this fare. (29, 30)

Following establishment of the interstate one-way coach fares of 2.2 cents on October 1, 1942, the southern carriers undertook to place all their intrastate fares to the inter-

state bases. Increases in the intrastate fares have been approved and are now in effect in Florida, Louisiana, Mississippi, South Carolina, and Virginia; and since the hearing herein favorable action on the carriers' application has been taken in Georgia. Adverse decisions on the proposed increases in coach fares have been rendered by the regulatory bodies in Alabama, North Carolina, and Tennessee. (14, 15)

The Kentucky intrastate one-way fares of respondents were on October 1, 1942, and still are 1.65 cents in coaches, except that the Gulf, Mobile & Ohio and Illinois Central maintain coach fares of 2.2 cents other than in instances where they meet the 1.65-cent fare of competing lines, and the Chesapeake & Ohio maintains a fare of 2.2 cents except on its Louisville-Winchester line. (12) Respondents herein filed with the Railroad Commission of Kentucky tariffs to become effective December 1 to increase the basic one-way coach fare to 2.2 cents, making it uniform with that applicable for interstate travel, and to make effective intrastate the round-trip fares which had been established uniformly for interstate application on October 1. This proposal included cancellation of the 15-day limit round-trip coach fares on the basis of 1.485 cents per mile and the 60-day limit round-trip coach fares on the basis of 1.65 cents per mile, and substitution therefor of the 3-months limit roundtrip fares on the basis of 1.98 cents per mile. The Railroad Commission of Kentucky suspended operation of the tariffs, and after a hearing, issued its report and order on May 31, 1943, denying respondents' proposal to make such one-way and round-trip coach fares and charges effective on intrastate passenger traffic in Kentucky, but approving proposed changes in round-trip fares for transportation in parlor and sleeping cars. (12, 13, 30, 31) Respondents thereupon filed with this Commission the petition upon which this investigation was instituted. After due notice to the State of Kentucky a hearing has been held, issues are whether the fares, charges, regulations or practices imposed by authority of the Stafe of Kentucky cause (1) any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand; or (2) any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

[fol. 2283] (I. C. Act sec. 13(4)) Under the first issue the question is one of the relation between the intrastate and the interstate fares, charges, regulations and practices; and under the second issue the question is one of the effect of the fares and charges upon income from intrastate traffic in the relation of the latter to railroad income as a whole. Florida v. United States, 282 U. S. 194; Wisconsin Railroad Comm. v. Chicago, B. & Q. R. Co., 257 U. S. 563.

Reasonableness of the Interstate Fares.—As a basis for a finding of violation of section 13(4), the interstate fares must be shown to be reasonable. Georgia Public Service Comm. v. United States, 283 U.S. 765; Increases in Louisiana Freight Rates and Charges, 229 I. C. C. 521, 524.

Comparing the interstate one-way coach fare of 2.2 cents with basic fares in effect at various times it will be seen that the fares in effect from June 15, 1914, to June 9, 1918, were 13.6 per cent higher than the present fares; those in effect June 10, 1918 to August 25, 1920, were 36.3 per cent higher; and those in effect August 26, 1920, to November 30, 1933, were 63.6 per cent higher. (10) The 1.5-cent fare maintained from December 1, 1933, to November 14, 1937, and from January 15, 1939, to February 9, 1942, was a subnormal fare maintained primarily to attract traffic that had been diverted to private automobiles. (8)

When in Passenger Fares and Surcharges, supra, the Commission in 1936 reduced the basic interstate coach fares throughout the nation from 3.6 to 2 cents, it gave consideration to the element of what the traffic will bear in the light of the competition from private automobiles (page 231), and in its summary of fact findings said (page 255):

9. Changed economic conditions, including reduced commodity prices and average income, together with the generally cheaper cost and greater convenience of travel by highway, have so affected the value of the rail passenger service to the public that a fare basis which was reasonable maximum before severe highway competition, and especially before the fall in recent years in commodity prices and average income, is out of harmony with present-day conditions.

As respondents point out, economic conditions since then have greatly changed, and the railroads today, instead of trying to attract passenger traffic, are endeavoring to dis-

courage unnecessary travel, and are cooperating with the Office of Defense Transportation in its effort to avoid the rationing of passenger travel. As hereinabove mentioned, in its order of January 21, 1942, the Commission found that the increased fares would be reasonable, and affirmed that finding in its report of March 2, 1942. In its report on further hearing, 255 I. C. C. 357, decided April 6, 1943, wherein [fol. 2284] the Commission suspended the operation of the increases that had been authorized on freight rates, it declined to suspend their operation on passenger fares (see pages 394, 395).

Other evidence of record shows the increased value of passenger transportation by reason of increased service rendered in connection therewith. Railroads operating in the South have spent large sums of money in remodeling and air-conditioning their equipment. The Southern Railway System lines in the past decade have air-conditioned or purchased new with air-conditioning facilities 189 coaches; have remodeled many coaches to provide additional space for retiring and smoking rooms, and in doing so reduced the seating capacity from 15 to 20 per cent; and have equipped 14 coaches with reclining chairs and in so doing reduced the seating capacity from 80 to 46 persons. (27, 28)

The increase in passenger traffic has resulted in increased operating expenses in several respects: Ticket selling, accounting, and general office forces have had to be greatly increased, and offices kept open longer hours, and this has also added to light and fuel bills; many trains have had to carry additional cars necessitating either the use of a second locomotive or the running of the train in two sections. the latter calling for the use of two full train crews; additional train employees to assist in loading and unloading passengers have been employed; additional mechanical forces have been employed in the car inspection and repair shops; car-cleaning, train-dispatching, and telegraphic forces have been greatly increased; engine-house expense has increased by reason of the use of a larger number of engines; and terminal switching costs have increased by reason of yard congestion. On Southern Railway System lines 631 regular trains were operated in two sections during June and July 1943. On the Cincinnati, New Orleans & Texas Pacific division of the Southern 4 extra sections are operated daily. (27, 74-79)

The transportation of members of the armed forces of the United States has constituted a material added burden upon the passenger departments and facilities of the railroads in the South. For example, the Southern Railway System lines during June and July 1943, operated 682 troop trains, and 2,896 extra cars handling troops were operated on regular trains. (28, 29). A special representative of the railroad rides all troop trains. (26) Considerable dead-head movement of equipment is necessary in assembling cars for these troop movements, and returning them to points where they will again go into service; and whenforeign line equipment is used mileage payments apply as well on the dead-head movement as on the useful movement. Additional terminal switching costs are incurred by reason. of troop train movements. Troop trains are given preference over other traffic, and this occasions delays to freight [fol. 2285] and passenger trains, with resulting increased costs in fuel and wages for those trains. The latter facts. and the further facts that because of shortage of passenger locomotives, freight locomotives are often used for trooptrain movements, and troop movements are some times made in mixed trains, results in a part of the increased expenses from troop movements being reflected in the freight' accounts rather than the passenger accounts. (26-27. 74-79)

On troop movements the Government does not pay the full published fare, but, except where land grant deductions are involved is allowed by the carriers a discount of 5 per cent from commercial fares. Where the movement is over a route where land grant deductions are applicable, the Government receives a reduction of 50 per cent of the commercial fare for that part of the route which is land grant, plus a further reduction of 3 per cent. Under the so-called equalization agreement of the railroads with the Government, land grant reductions are applied also over competing lines. There is, however, no land grant mileage in Kentucky. (29, 33)

In addition to the increases in their operating expenses so far discussed which are attributable to the increase in passenger traffic, respondents have also had many increases in their expenses attributable to other causes. Since the Commission prescribed the 2-cent coach fare in 1936 there has been a substantial increase in the cost of materials and

supplies used by them. As a composite average for four of respondents, from October 1, 1936, to December 1, 1942, the prices of forest products (ties, bridge timber, lumber, etc.) increased 65 per cent; iron and steel products used by railroads 20 per cent; and fuel (coal and oil), 26 per cent. The average hourly rate of compensation of all employees of the seven principal respondents increased by the following percentages over 1936: 1937, 3 per cent; 1938, 10 per cent; 1939 and 1940, 9 per cent; 1941, 16 per cent; 1942, 24 per cent; average increase 11 per cent. Railway tax accruals of these same carriers increased from a total, in round figures of \$36,451,000 in 1936 to \$179,958,000 in 1942, an increase of 394 per cent. The railway tax accruals apportioned to passenger service under this Commission's formula, for the same years increased 246 per cent. (Ex. 6)

The freight and passenger operating ratios, respectively of the seven principal respondents averaged as follows: 1936, 59 and 128; 1937, 63 and 130; 1938, 62 and 131; 1939, 61 and 132; 1940, 60 and 136; 1941, 57 and 115; and 1942, 56 and 74. (Ex. 6) In its report in *Increased Railway Rates, Fares, and Charges, 1942, 255* 1. C. C. 357, 394, the Commission said:

[fol. 2286] The situation regarding standard passenger fares differs from that as to freight rates and charges in important respects. As we have previously shown, the evidence herein discloses that passenger traffic failed for many successive years to pay its proper share of railway expenses, and that only with the large volume of traffic and passenger revenue was the 1942 passenger deficit currently eliminated. Even with that increased volume of traffic and revenue, as shown by the reports for 1942 and the current reports so far made this year, the operating ratio remains de-

<sup>&</sup>lt;sup>1</sup> Chesapeake & Ohio, Illinois Central, Louisville & Nashville, and Southern.

<sup>&</sup>lt;sup>2</sup> The Cincinnati, New Orleans & Texas Pacific Railway Company, Gulf, Mobile & Ohio, Nashville, Chattanooga & St. Louis, and the four named in footnote 1. Other respondents have only a few miles of road in Kentúcky. (137, 138)

cidedly less favorable for passenger and allied services than for freight.

The aggregate net railway operating income from passenger operations of these 7 railroads for recent years was as follows: (Ex. 6)

3	1936,	deficit		 			22,763,721
	1937,	deficit					21,078,023
	1938,	deficit		 1	. 4. 1.		24,220,376
	<b>1939</b> ,	deficit		 			24,189,043
	1940,	deficit		 		. 2	25,748,961
	1941,	deficit		 			18,387,738
-	,	income	4	 			11,118,537
	Averag	e, defici	t	 N			17,895,617

Two of respondents had a deficit in 1942.<sup>3</sup> It will be noted that the increase in net railway operating income, passenger, 1942 over 1941, for these 7 roads was \$29,506,275.

The Issue of Undue or Unreasonable Advantage, Preference, or Prejudice.—In support of their contention that the fares which are imposed by authority of the State of Kentucky cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, respondents rely upon (1) the similarity of the intrastate and interstate services, and (2) the difference in the fares.

All trains operated by respondents are available to interstate and intrastate passengers alike; interstate and intrastate passengers ride the same trains, in the same cars, and the same seats are available to and used by both. (17, 81) Upon this record it appears that there is no difference in the service and conveniences accorded interstate passengers and that accorded intrastate passengers, within the State of Kentucky.

The showing as to the difference in fares consists of exhibits (Exs. 4, 5) comparing the one-way and round-trip fares for interstate journeys with fares for intrastate journeys for similar distances. As an illustration, the fare from Lexington, Ky., to Columbus, Ohio, 197 miles, is \$4.44, [fol. 2287] while the fare from Lexington to Owensboro,

<sup>&</sup>lt;sup>3</sup> Chesapeake & Ohio Railway Company, \$1,562,533; Gulf, Mobile and Ohio Railroad Company, \$592,468.

Ky., 199 miles, is \$3.35, a difference of \$1.09. (25) It would serve no useful purpose to multiply illustrations herein, for all are based upon the simple facts that the interstate fares are made 2.2 cents per mile while the intrastate fares are made 1.65 cents per mile.

The Issue of Undue, Unreasonable, or Unjust Discrimination.—To support their contention that the fares imposed by authority of the State of Kentucky cause undue, unreasonable, or unjust discrimination against interstate commerce respondents rely upon the loss of revenues which has resulted from refusal of the Railroad Commission of Kentucky to permit the intrastate fares to be increased to the interstate level. They determined the amount of traffic affected by the rates which they seek to increase, for a period not disclosed on the record but which they believed to be representative, and applied the result over a longer period of time. (133) The intrastate tariffs were published to become effective December 1, 1942. The estimated loss of revenue for the succeeding 7 months for various respondents is as follows: (Ex. 6)

	Ionths Ended
Ju	ne 30, 1943.
Chesapeake & Ohio	\$ 23,580
Cincinnati, New Orleans & Texas Pacific	11,803
Bulf, Mobile & Ohio	
llinois Central	15,002
Louisville & Nashville	247,698
Nashville, Chattanooga & St. Louis	
Southern	
****	
Total	\$306,951

· Upon the above basis the estimated annual loss of revenue to all the principal respondents approximates \$526,000.

Respondents say that in addition to the revenue losses above estimated, they are undoubtedly losing a substantial amount of revenue by reason of passengers who intend to make an interstate journey purchasing intrastate tickets to points on or near the State line, and either repurchasing at such points or paying cash fares for the remainder of their interstate trips. Numerous instances of the possibility of doing this were given (Exs. 3, 4), but it was conceded that it is very difficult to obtain direct evidence

of such transactions. It is known to occur in the case of passengers buying tickets from points in Kentucky to Ludlow, Ky., just across the river from and intermediate to Cincinnati, and remaining on the train to Cincinnati. Ofttimes the conductor does not reach such passengers to collect an additional fare, as the time between the two sta-[fol. 2288] tions is only 5 minutes. (18, 21, 22, 37, 39, 82-86) Such evidence requires no special consideration, since the effect, to the extent that passengers are engaging in such a practice, is necessarily fully reflected in the above estimate of revenue losses.

Protestants' Evidence.—Protestant Railroad Commission of Kentucky shows that the present intrastate one-way fares between representative points average 14.7 percent higher, and the proposed fares 40.7 percent higher, than the one-way motorbus fares from and to the same points, and the present and proposed round-trip fares average 9 and 41 percent higher than the round-trip motorbus fares. (Ex. 7) Differences in rail and bus fares are sometimes due to differences in distance.

Passenger traffic and revenues therefrom in Kentucky have increased in recent years, as indicated by reports of the respondents having approximately 96 percent of the total railroad mileage in Kentucky. Passenger revenues earned in Kentucky on intrastate and interstate traffic were \$4,182,411 in 1939, \$4,493,479 in 1940, \$6,497,525 in 1941, and \$14,023,436 in 1942. Passengers carried by the same railroads and for the same years were 2,925,085, 3,065,609, 3,931,378, and 6,633,604. Passenger miles increased from 230,594,000 in 1939 to 723,909,000 in 1942. number of passengers per car-mile was 10.6 for 1939, and 22.3 for 1942. As indicating the proportion of passenger revenues accruing in the State of Kentucky which is derived from intrastate traffic only, for the Louisville & Nashville in 1939 the total was \$2,200,241, and the intrastate was \$519,726, while the corresponding revenues for the Chesapeake & Ohio were \$682,716 and \$146,987. (Ex. 8)

Turning to the system figures for the seven principal respondents, following is a comparison of the first six

<sup>\*</sup>Chesapeake & Ohio; Cincinnati, New Orleans & Texas Pacific; Illinois Central; Louisville & Nashville; and Southern.

months of 1942 with the same period of 1943. Freight revenues, \$328,971,432 and \$393,358,095; passenger revenues \$37,617,828 and \$83,550,668; total operating revenues, \$365,967,329 and \$502,695,431; total operating expenses, \$235,959,500 and \$286,040,531; operating ratio, 64.5 and 56.9; and net railway operating income, \$66,457,303 and \$78,241,371. (Ex. 9)

As protestants point out, these seven respondents in recent years have been able to take care of their increases in operating expenses and railway tax accruals, and still show consistent and substantial increases in their net railway operating income. The relation of net railway operating income to investment in railway property including cash, materials and supplies for the seven principal respondents shows average rates of return as follows: 1938, 2.98 percent; 1939, 3.76 percent; 1940, 3.95 percent; 1941, 5.41 percent; and 1942, 5.78 percent. (Exs. 10, 19) It should [fol. 2289] be noted that these rates of return are computed after deduction of Federal income taxes. In *Increased Railway Rates, Fares, and Charges, 1942*, 248 ICC 545, 556, the Commission said:

We may observe that, while taxes have been deducted in stating net railway operating income in the foregoing table, we have held, *Reduced Rates*, 1922, 68° ICC 676, 683, that—

railway corporations should, like other corporations, pay their Federal income taxes out of the income, rather than collect, it, in effect, from the public in the form of transportation charges adjusted to enable it [them] to retain the designated fair return over and above the tax.

The Acting Price Administrator, on behalf of himself and the Director of Economic Stabilization, opposes any increase in fares. Objection was made at the hearing and renewed in his brief, to the admission of testimony by two witnesses concerning the use of the intrastate fares by passengers making interstate journeys, upon the ground that it was hearsay. (21, 82) The strict rule observed in jury trials concerning hearsay evidence is not binding upon this Commission in an inquiry into the existence of undue prejudice, preference, and discrimination. William Kelly Milling Co. v. Atchison, T. & S. F. Ry. Co., 211 ICC 53, 65.

The witnesses were an assistant passenger traffic manager and a division superintendent, and the facts to which they testified were reported to them in their official capacity by subordinate employees. The examiner properly admitted the testimony.

This intervener contends that because of changed conditions resulting from the war the interstate level of coach fares, 2.2 cents, which applies not only throughout the South, but throughout the United States, is unreasonably high, and that the Commission should require reduction of such rates to 1.65 cents per mile. While, in order to find undue prejudice and preference under section 13(4) and order its removal it would be necessary to find the reasonable maximum or minimum or maximum and minimum interstate fares, the reasonableness of the interstate fares in this proceeding is a collateral issue; and not being directly in issue they may not be required to be reduced in this proceeding.

As evidence that the interstate fare basis of 2.2 cents per mile is unreasonably high, intervener relies upon the fact that during peacetimes when passenger service was furnished by respondents at a loss the fare of 2 cents per mile was too high to produce the greatest amount of revenue, as respondents found when they increased the fare from 1.5 cents to 2 cents on November 15, 1937; and they restored the 1,5-cent fare on January 15, 1939. (16, 46, 47) They [fol. 2290] also rely upon the fact that when passenger service was furnished at a loss, this Commission approved general levels of freight rates which took into consideration these passenger losses. Fifteen Percent Case, 1937-1938, 226 ICC 41, 54, and these returns from freight traffic have been multiplied during the war by greatly increased freight traffic, while the passenger service itself is now returning a profit. It is therefore contended that either the passenger fares or the freight rates should be reduced.

If freight traffic is now producing more than a fair return for the above-mentioned reason or any other reason, it may be dealt with in an appropriate proceeding. The evidence in this record does not indicate that the passenger traffic of these respondents as a group is producing more than a fair return.

Discussion, Ultimate Findings of Fact, and Conclusions

Section 13(4), authorizes us to prescribe intrastate rates only when, after full hearing, we find that the existing rates

are imposed by authority of the State and cause "undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce." We will consider first whether the first of these provisions has been or is being violated—that relating to undue or unreasonable advantage, preference, or prejudice.

Evidence to sustain an order and finding that intrastate rates are violative of section 13(4) in that they unduly prejudice persons or localities must be of equal dignity and probative value with the evidence required to sustain a finding under section 3. Barrett Co. v. Atchison, T. & S. F. Ry. Co., 172 ICC 319, 334. We have frequently found that the evidence to support a finding of undue prejudice and preference must ordinarily establish that such prejudice and preference constitute a source of undue disadvantage to one party and of undue advantage to another. Rates on Raw Dolomite and Fluxing Stone in Ohio, 188 ICC 495, 512. No persons who pay the higher interstate fares and no localities are appearing herein to complain of undue or unreasonable advantage, prejudice, and preference, and as far as this record shows, none have complained to respondents. (119, 120, 145, 174, 181, 182; 206) Respondents do not ask relief for any particular persons or places, but seek a Statewide order. In Rates on Raw Dolomite and Fluxing Stone in Ohio, supra, at 511, 512, the Commission said:

We have no authority to increase intrastate rates unless it is clearly shown that they are working injury [fol, 2291] to shippers or localities in interstate commerce or discriminate unjustly against such commerce. Dewey Portland Cement Co. v. Alton & E. R. Co., 176 I. C. C. 671. It is also well settled that a mere difference in rates is not enough to establish such facts. It must be shown that the difference in rates, actual or relative, is the moving factor in creating undue prejudice to competing shippers in interstate commerce or in casting an undue burden upon or obstructing such commerce. Dewey Portland Cement Co. v. Atchison, T. & S. F. Ry. Co., 174 I. C. C. 87.

That a mere difference in rates does not alone make out a case under section 13(4), see also *Intrastate Rates Within Louisiana*, 164 I. C. C. 600, 616.

Disparities between the intrastate and interstate rates were shown and are described herein. But it is not shown in what way any passenger or locality in interstate commerce is injured by this disparity, or how they would be benefited by an increase in the intrastate fares.

Upon the evidence we find that the intrastate fares here considered are imposed by authority of the State of Kentucky; that there is a real and substantial disparity between those fares and the interstate fares applicable in Kentucky and other Southern States; that the interstate fares are not shown to be in excess of maximum reasonable fares; that there is a substantial passenger traffic moving under both intrastate and interstate rates; that interstate and intrastate passengers ride on the same trains in Kentucky and receive the same services; and that no injury is shown upon this record to result to the interstate passengers or localities by reason of intrastate passengers being charged lower fares, which would be relieved by increasing the intrastate fares to the interstate level.

Upon these facts it is recommended that the Commission find that the intrastate rates imposed by authority of the State of Kentucky have not been shown to cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand.

Turning now to the second portion of section 13(4), which prohibits and makes unlawful any undue, unreasonable, or unjust discrimination against interstate or foreign commerce caused by rates, fares, or regulations imposed by authority of any State: Section 15a, which is intended, among other things, to insure a fair return for carriers, provides that in the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the need, in the public [fol. 2292] interest, of adequate and efficient railway transportation service at the least cost consistent with the furnishing of such service, and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. The Supreme Court, construing the above provision of section 13(4) in

Railroad Comm. of Wisconsin v. Chicago, B. & Q. R. Co., 257 U. S. 563, 585, 586, 589-591, said:

Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system.

When we turn to paragraph 4, section 13, however, and find the Commission for the first time vested with a direct power to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," it is impossible to escape the dovetail relation between that provision and the purpose of section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable, and unjust discrimination against interstate or foreign commerce," within the ordinary meaning of those words.

Congress, in its control of its interstate commerce system, is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonably compensatory return for all the work it does.

Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce.

At that time section 15a dal not read the same as at present, but its general purpose was to secure to the carriers revenues sufficient to enable them, under honest, efficient, and economical management, to provide in the public interest adequate and efficient transportation service, the same as under the present provisions.

The mere showing of a disparity between interstate and intrastate rates is not, when confined to a specific class of traffic, sufficient to support a finding of undue, unreasonable, or unjust discrimination against interstate commerce. Florida v. United States, supra; Florida v. United States, 292 U. S. 1; Utah Edible Livestock Rates and Charges, 206 I. C. C. 309, 312.

When we come to consider the question of whether, under the present conditions confronting respondents, the addition of approximately \$526,000 of annual revenues from Kentucky intrastate passenger traffic is necessary in order to enable them to fulfill their national purposes as contemplated by section 15a, and whether the action of the Rail-[fols. 2293-2295] road Commission of Kentucky in refusing to permit the increase in fares which will produce approximately this amount constitutes an obstruction to interstate commerce, we must unhesitatingly reply in the negative. Respondents' average passenger operating ratio in 1942 Respondents' contention that "the losses in revenue directly resulting from the low level of intrastate fares respondents are now required to maintain in Kentucky, which have been proved with almost mathematical exactness, are all that is needed to justify" the finding sought, hust be rejected as an inaccurate statement of the law, and out of harmony with the reasoning of the Supreme Court in the opinion last above quoted. The failure of respondents to receive this additional intrastate revenue is not at the present time casting any undue burden upon interstate commerce.

Upon the facts found it is recommended that the Commission find that the intrastate fares herein considered, imposed by State authority, do not cause any undue, unreasonable, on unjust discrimination against interstate or foreign commerce.

Effect of The Stabilization Act.—The Acting Price Administrator, on behalf of himself and the Director of Economic Stabilization, asks that we give effect to the complementary Congressional policies embodied in the Interstate Commerce Act and in the Price Control and Stabilization Acts, by denying increases where these are not shown to be necessary, either to aid in the effective prosecution of the war or to correct gross inequalities, or where the proposed rates are not shown to be just and reasonable.

The proposed increased fares have not been shown to be necessary, either to aid in the effective prosecution of the ar or to correct gross inequalities.

An order discontinuing the proceeding should be entered.

[fols. 2296-2299] IN UNITED STATES DISTRICT COURT

No. 706

THE STATE OF ALABAMA and Public Service Commission, Plaintiffs,

VS.

United States of America and Interstate Commerce Commission, Defendants

No. 707

THE STATE OF TENNESSEE and PORTER DUNLAP et al., Constituting The Railroad and Public Utilities Commission of the State of Tennessee, Plaintiffs,

VS.

United States of America and Interstate Commerce Commission, Defendants

No. 708

Commonwealth of Kentucky and Railroad Commission of Kentucky, Plaintiffs,

VS.

UNITED STATES OF AMERICA, Defendant

ORDER CONVENING THREE-JUDGE COURT

Pursuant to section 47 Title 28 of the United States Code, on an application made to me for preliminary or interlocutory injunction, it appearing that the Bill of Complaint in each of the above three cases is brought to enjoin the enforcement of an order of the Interstate Commerce Commission, I hereby call to my assistance for the hearing of the application and cause, the Honorable Elwood Hamilton, Judge of the Circuit Court of Appeals for the Sixth Circuit, and the Honorable Mac Swinford, District Judge of the Eastern and Western Districts of Kentucky.

This 20th of June 1944.

Shackelford Miller, Jr., United States District Judge.

[fol. 2300] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

UNITED STATES OF AMERICA, Defendant

ACKNOWLEDGMENT OF SERVICE-Filed July 5, 1944

To the Honorable Judges of said Court:

Now comes J. E. Marks, attorney for the above-named Plaintiffs, and acknowledges service by a copy of the Motion to Intervene as Plaintiff in the above entitled proceeding, with accompanying Complaint (Petition) of Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, including the affidavit and attached tabulations of one Doris S. Whitnack.

The Plaintiffs have no objection to the granting of the

motion to-intervene.

Dated at Lexington, Ky., this 3rd day of July, 1944.

J. E. Marks.

[fol. 2301] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

of Kentucky, Plaintiffs,

UNITED STATES OF AMERICA, Defendant

ACKNOWLEDGMENT OF SERVICE—Filed July 3, 1944

To the Honorable Judges of said Court:

Now comes the United States of America, defendant in the above entitled proceeding, and the Interstate Commerce Commission, and acknowledge service by copy of the Motion to Intervene as Plaintiff with accompanying Complaint (Petition) of Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, including the affidavit and attached tabulations of one Doris S. Whitnack.

Dated at Washington, D. C., this 29th day of June, 1944.

Robert L. Pierce, Special Assistant to the Attorney
General, for the Attorney General of the United
States. Allen Crenshaw, P., for the Interstate
Commerce Commission.

[fol. 2302] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

UNITED STATES OF AMERICA, Defendant

Motion for Leave to Intervene as a Plaintiff-Filed July 6, 1944

Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, moves for leave to intervene as a plaintiff in this action, and to assert the causes of action set forth in his Complaint (Petition), of which a copy is hereto attached, on the ground that the Price Administrator, on his own behalf and on behalf of the Economic Stabilization Director, was an intervener participating in the proceeding of the Interstate Commerce Commission leading to the order which is the subject of this suit (Title 28, U. S. C., Sec. 45a); on the ground that plaintiffs herein rely for relief upon provisions of the Emergency Price Control Act of 1942, as amended by the Stabilization Act of October 2, 1942 (50 U. S. C. App., Sec. 925(d)); and on the ground that the Economic Stabilization Director. and the Price Administrator have administrative duties under the said Acts affected by said order; and as such

[fol. 2303] they have causes of action presenting both questions of law and of fact which are common to the main action.

Respectfully submitted, Fred M. Vinson, Director of the Office of Economic Stabilization, by Chester Bowles, Price Administrator of the Office of Price Administration; Richard H. Field, General Counsel, Office of Price Administration; David F. Cavers, Assistant General Counsel, Office of Price Administration; Bernard M. Fitzgerald, Transportation Counsel, Transportation and Public Utilities Division, Office of Price Administration; M. D. Miller, Attorney, Office of Price Administration, 5319 Federal Office Building No. 1, 2nd and D Streets, S. W., Washington 25, D. C.

(Motions similar in form and content, omitted in printing, were filed in Cases No. 706 and 707.)

[fol. 2304] [File endorsement omitted].

[fol. 2305] IN UNITED STATES DISTRICT COURT

## Civil Action No. 708

COMMONWEALTH OF KENTUCKY and RAILBOAD COMMISSION OF KENTUCKY, and Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, Plaintiffs,

## United States of America, Defendant Complaint (Petition)—Filed July 6, 1944

- 1. This suit is brought under the Urgent Deficiencies Act of October 22, 1913, 28 U.S. C. A. 43-48, to suspend enjoin, annul, and set aside the order of the Interstate Commerce Commission hereinafter described.
- 2. Fred M. Vinson is the duly appointed and acting Director of the Office of Economic Stabilization. By virtue of Executive Order 9250 (7 F. R. 7871), issued October 3, 1942, the Director of the Office of Economic Stabilization is the agency designated by the President of the United

to receive notice of any general increase in the charges of common carriers or other utilities over those in effect on September 15, 1942, pursuant to the Stabilization Act of October 2, 1942 (Public Law 729, 77th [fol. 2306] Congress, 2nd Session, 50 U. S. C. A. App. 66961-971). By Directive No. 1 (7 F. R. 8758), issued by the Economic Stabilization Director on October 14, 1942, the Price Administrator of the Office of Price Administration was designated as the representative of said Director to receive notices of such general increases in common carrier or other public utility rates or charges under Section 1 of said Stabilization Act (50 U. S. C. A. App. (961), with authority to intervene and participate in proceedings before Federal, State, and municipal authorities in connection with proposed general increases in such rates and charges; and the said Chester Bowles is the duly appointed and acting Price Administrator of said Office of Price Administration.

3. Pursuant to the direction of said Stabilization Act of October 2, 1942, the President issued Executive Order 9250, mentioned in paragraph 2 hereof, said order stating in part:

The guiding policy of the (Economic Stabilization) Director and of all departments and agencies of the Government shall be to stabilize the cost of living in accordance with the Act of October 2, 1942; and it shall be the duty and responsibility of the Director and of all departments and agencies of the Government to cooperate in the execution of, such administrative programs and in the development of such legislative programs as may be necessary to that end. The administration of activities related to the national economic policy shall remain with the departments and agencies now responsible for such activities, but such administration shall conform to the directives on policy issued by the Director. (Title I, Section 4)

[fol. 2307] Subsequently, on April 8, 1943, the President issued Executive Order 9328 (8 F. R. 4681), a subsection of said order making the following direction of agencies engaged in regulation of common carrier rates and charges.

The attention of all agencies of the Federal Government, and of all State and municipal authorities, concerned with the rates of common carriers or other public utilities, is directed to the stabilization program of which this order is a part so that rate increases will be disapproved and rate reductions effected, consistently with the Act of October 2, 1942, and other applicable federal, state or municipal law, in order to keep down the cost of living and effectuate the purposes of the stabilization program. (Section 4)

4. By order of August 1, 1942, the Interstate Commerce Commission authorized the railroads operating in southern territory, which territory includes the State of Kentucky to increase passenger coach fares, in interstate commerce, to the basis of 2.2 cents per mile; and by tariffs which became effective on October 1, 1942, the railroads operating in said territory and State made general increases of coach fares for transportation of passengers in interstate commerce to the level of 2.2 cents per mile one-way, and 1.98 cents per mile roundtrip with a return limit of three months. Said increases of fares were protested and the suspension of their operation was requested by the Price Administrator, but the Interstate Commerce Commission declined to suspend.

[fol. 2308] 5. By schedules filed with the Railroad Commission of Kentucky to become effective December 1, 1942, the principal Class I railroads operating in Kentucky sought to increase passenger coach fares between points within said State to the interstate level as aforesaid. Upon protest of the Price Administrator and various citizens of Kentucky the Railroad Commission heard the matter, at which hearing an appearance was made by a representative of the Office of Price Administration for the Economic Stabilization Director and the Price Administrator. The Railroad Commission found that the proposed increases of coach fares were not shown to be just and reasonable, and ordered cancelation of the said schedules to this extent.

6. By petition dated June 24, 1943, filed with the Interstate Commerce Commission, the Chesapeake and Ohio Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Louisville and Nashville Railroad Company; The Nashville, Chattanooga and St. Louis Railway; and Southern Railway Com-

pany sought an order from said Commission prescribing increased fares to be charged intrastate passengers within Kentucky to remove alleged unjust and unlawful advan[fol. 2309] tage, preference, prejudice, and discrimination as between intrastate and interstate commerce (section 13(4)) of the Interstate Commerce Act); whereupon the said Commission heard the matter, at which hearing an appearance was entered for the Price Administrator, on his own behalf and on behalf of the Economic Stabilization Director, as intervener in opposition to said increases in fares.

- 7. By petition filed with the Interstate Commerce Commission on or about July 31, 1943, the Price Administrator sought a general investigation by the Interstate Commerce Commission of the reasonableness, under present conditions, of interstate coach fares of all railroads in Southern Territory. Said petition was denied, however, by the Interstate Commerce Commission.
- 8. By a report decided March 25, 1944, served March 30, 1944, in No. 29000, Kentucky Intrastate Fares and related cases (issued under No. 28963, Alabama Intrastate Fares) the Interstate Commerce Commission granted the said petition mentioned in paragraph 6 hereof, holding that the Commission would consider entry of an appropriate order if the Railroad Commission of Kentucky did not adjust, within thirty days from said service date, the intrastate fares in the State of Kentucky to the level. of the corresponding interstate fares contemporaneously maintained by the Kentucky railroads, to, from, and through said State; provided, that the aggregate charge [fol. 2310] made by any of the railroads for the intrastate transportation shall not exceed the aggregate charge made for like accommodations and for a like distance by the same railroad for interstate transportation to, from, or through such State.
- 9. On or about April 26, 1944, the Price Administrator filed a petition with the Interstate Commerce Commission, on his own hehalf and on behalf of the Economic Stabilization Director, and requested that said Commission reconsider its decision set forth in said report mentioned in paragraph 8 hereof. By an order of May 8, 1944, the Commission denied said petition.

10. By another and separate order dated May 8, 1944. as changed by a corrected order of the same date issued on or about May 24, 1944, the Interstate Commerce Commission required the railroads operating in the State of Kentucky to establish, on or before July 1, 1944, upon notice to the Commission and to the general public by not less than 30 days filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act, and thereafter to maintain and apply, passenger fares for intrastate transportation in Kentucky which shall be on bases no lower than the passenger fares presently maintained and applied by said railroads for like accommoda-[fol. 2311] tions in interstate transportation to, from, and through Kentucky; provided, that the resulting aggregate charge made by any of said railroads for intrastate transportation in Kentucky shall not exceed the aggregate charge made for like accommodations and for a like distance for the same railroad in interstate transportation to, from, or through such State.

11. In the report mentioned in paragraph 8 hereof, the Interstate Commerce Commission failed or refused to give full effect to wartime conditions and the stabilization legislation, although it was under a duty to do so.

(a) The Commission erred, as a matter of law, in concluding that its consideration of the stabilization legislation should be limited to a finding that common carriers making rate increases have complied with the requirement of Section 1 of the Stabilization Act, by the giving of notice and consent to intervene to the designated Federal agent. In addition to such a finding, the Commission was under a duty to accommodate the provisions of the Interstate Commerce Act to the statutory wartime programs of the Emergency Price Control Act of 1942 and the amendatory Stabilization Act of October 2, 1942, and was under a duty to adjust its actions as indicated by the desires of Congress to have the policies of said price control [fol. 2312] and stabilization legislation leavened or imple-

sion is primarily and directly concerned.

(b) The Commission failed or refused to determine that increases of coach fares over those in effect on

mented in the enforcement of the various specific provisions of the legislation with which the CommisSeptember 15, 1942, were inconsistent with the declaration of Congressional policy in Section 1 of the Emergency Price Control Act of 1942, namely, that it is necessary to the effective prosecution of the present war, and certain purposes of that Act are, "to stabilize prices and to prevent speculative, unwarranted, and absormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living.

(c) On the contrary, the findings of the Commission, and the uncontradicted evidence submitted to the Commission by the railroads at the hearing mentioned in paragraph 6 hereof, reveal that the increases of passenger coach fares in the Southern territory and Kentucky over those in effect on September 15, 1942, were abnormal in relation to peacetime conditions, and that said increases were made possible or practical because of inflationary wartime conditions and the restricted use of automobiles during the war emergency. From December 1, 1933, to November 14, 1937, inclusive, the general basis of interstate and intrastate coach fares in Southern territory and Kentucky was 1.5 cents per mile. From November 15, 1937, to January 14, 1939, inclusive, the general basis of coach fares, interstate and intrastate in said territory and Kentucky, was 2.0 cents per mile. On January 15, 1939, said fares were reduced to the basis of 1.5 cents per mile, to which 10 percent increases were added on February 10, 1942, bringing the basis of said fares to 1.65 cents per mile. Said fares of 1.5 cents per mile were maintained primarily to attract traffic that had been diverted chiefly to private automobiles. The reduction in fares from [fol. 2314] the basis of 2.0 cents to 1.5 cents per mile, effective January 15, 1939, resulted from the conclusion

1938.

of certain Southeastern railroads that "it would be to their advantage to restore the former one-way coach fare of 1.5 cents per mile" (See page 16 of the Transcript of Testimony taken at the hearing before the Interstate Commerce Commission, mentioned in paragraph 6 hereof). The adverse effects upon traffic of the increases of said fares for the fourteen months following November 15, 1937, for the Kentucky railroads, was described by the witness for the railroad respondents at said hearing, who testified as quoted above, and who expanded that testimony as follows (Transcript at pages 46-47):

"A. They reached the conclusion because the 2 cents increase did not produce the results they anticipated that it would produce.

"Q. You mean by that the total revenue produced by the 1½ cent fare was more than the total revenue being produced by the 2 cent fare!."

"A. Generally speaking, I would say that that is correct."

[fol. 2315] Corroboration of the testimony is unmistakably shown by the following data voluntarily submitted by said railroads to the Commission in their Exhibits submitted as evidence in their Exhibits submitted as evidence in the proceedings mentioned in paragraph 6 hereof:

## Revenue Passenger Miles Per Train Mile (Exhibit 6, pages 24 and 25)

1931	30.10				1937	48.3	3
1932	27:78		1		1938	39.4	4
1933	32.9		1.	0	1939	43.9	9
1934	38.7		/		1940	48.6	6
1935	38.7		- '	-	1941	62.7	7
1936	44.8				1942	119.7	7
		10	1st 4 r	no.	1943	162.	5

. <	Revenue per Passenger Mile in Coaches Ex. 6, p. 14	Revenue Per Coach Mile Ex. 6, p. 16	Passenger Service Operating Ratio Ex. 6, p. 10	Passenger Miles per Coach Mile Ex. 6, p. 30
	1.517¢ · °	23.65¢ 21.85¢	130%	15 60 12 33
-				

Percent change	Favorable	"Unfavorable	Unfavorable	Unfavorable	
1937 to 1938	16.8%	7.6%	0.8%	21.0%	
1939	1.482¢	21 .12¢ 22 66	132 136	14 25 15 77	
1940	1.506	29.41	115	19.53	
1942	1.686	52 02	74	30 85	
Percent change	Favorable	~ Favorable	Favorable	Favorable	
1941 to 1942 -	12.0%	76.9%	35.6%	58.0%	

Economic conditions since 1939 have greatly changed, and the increased intrastate fares required by the Commission, as mentioned in paragraph 7 hereof, will [fol. 2316] produce added revenues. The railroads operating in Kentucky are, therefore, authorized and required by said corrected order, mentioned in paragraph 10 hereof, to take advantage of warume conditions to increase passenger coach fares to a level which said railroads found disadvantageous during peacetime.

(d) In said report the Interstate Commerce Commission failed or refused to be governed by the declaration or finding of Congress in the Stabilization Act of October 2, 1942, that general increases of common carrier rates or charges above those in effect on September 15, 1942, are inflationary per se, and that stabilization of such rates and charges is necessary to aid in the effective prosecution of the war.

The said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, having been issued contrary to the intentions and desires of Congress, transcends the Commission's constitutional or statutory powers, and is unlawful, void, and of no effect.

12. In the report of March 25, 1944, mentioned in paragraph 8 hereof, the Interstate Commerce Commission acted in disregard of the executive orders of the President set forth in paragraph 3 hereof, although said Commission [fol. 2317] had both the power and duty to cooperate in the wartime stabilization program of Congress as set forth in the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942. The said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, having been issued contrary to the said executive order, therefore transcends the Commission's constitu-

tional or statutory powers, and is unlawful, void, and of no effect.

- 13. In said report of March 25, 1944, mentioned in paragraph 8 hereof, the Interstate Commerce Commission did not make sufficient findings of basic facts to support the Commission's sixth enumerated finding and conclusion that the Kentucky intrastate coach fares cause and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable. disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce. Under the Interstate Commerce Act, the Commission is empowered to prescribe intrastate rates, fares, and charges only after findings of facts that any advantage, preference, prejudice, or discrimination from the intrastate fares causes some result which is undue, unjust, of unreasonable as respects interstate commerce. The said report of the Commission does not state any finding of fact showing any undue, [fol. 2318] unjust, or unreasonable result caused by the differences between the interstate and intrastate coach fares mentioned in said report. The said corrected order of May 8, 1944, having been based upon insufficient findings of basic fact, therefore transcends the Commission's constitutional and statutory powers, and is unlawful, void, and of no effect.
- 14. The record before the Interstate Commerce Commission in the proceeding mentioned in paragraph 6 hereof does not contain substantial evidence to clearly support the sixth enumerated finding mentioned in the preceding paragraph. Said finding is therefore arbitrary. The Commission's said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, being based upon said arbitrary finding, is also arbitrary, transcends the Commission's constitutional and statutory powers, and is void and of no effect.
- 15. The Interstate Commerce Commission erred, as a matter law, in its fourth enumerated finding of said report of March 25, 1944, mentioned in paragraph & hereof, that transportation of interstate passengers in the State of Kentucky, in the same trains and generally in the same cars with intrastate passengers, which interstate passengers

gers are forced to pay higher fares than the intrastate passengers, causes undue and unreasonable advantage and [fol. 2319] preference of the intrastate passengers, and undue and unreasonable disadvantage and prejudice of the interstate passengers. The said corrected order of May 8, 1944, having been based upon an error of law, therefore transcends the Commissions' constitutional and statutory powers, and is unlawful, void, and of no effect.

- 16. In said report of March 25, 1944, mentioned in paragraph 7 hereof, the Interstate Commerce Commission erred in that part of its fifth enumerated finding that "traffie-moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service".
  - (a) The quoted finding was based in part upon findings of facts with respects to so-called passenger service net railway operating deficits from 1936 to 1941, inclusive, incurred while interstate and intrastate coach fares were on the same general basis. The Kentucky railroads are not entitled to regulation by the Commission which will insure that the said railroads' businesses will produce net revenues, nor does the Constitution require that the losses of such businesses in past years be restored from future earnings.
  - (b) The quoted finding of the Commission was made without consideration of the fact that said Commis-[fol. 2320] sion had authorized general levels of freight rates to include a factor for the support of said passenger service because of said deficits. Passenger Fares and Surcharges, 214 I. C./C. 174, 227, the Commission said:

"That the generally unprofitable nature, for the last decade, of the rail passenger service throughout the country has been consistently given consideration by us in determining the reasonableness of freight rates, is amply demonstrated by expressions in our annual reports to the Congress and in numerous decisions.

In the Fifteen Percent Case, 1937-1938, 226 L.C. C. 41, the Commission authorized the railroads of the coun-

try to make a 10 percent increase in freight rates generally, with certain exceptions, and said (p. 54):

"This deficit in the passenger traffic as a whole has continued from at least 1926, mounting steadily to a peak in 1932, and receding only slightly thereafter. Passenger Fares and Surcharges, 214 I. C. C. 174, 182. The interrelation of the freight and passenger traffic has often been commented on by us, and we have declined to accede to the proposition again repeated here by certain protestants that we can authorize no increase in freight rates to correct deficiencies in aggregate earnings growing out of the inability of the passenger business to meet its full share of the revenue burden."

- (c) In considering the statistics in the regular monthly reports of Class I railroads to the Interstate Commerce Commission, the Commission compared figures for December 1943 with prior months to indicate a trend of unfavorable increased expenses and reduced revenues. However, the figures for said [fol. 2321] monthly reports clearly show that those for December 1943 were abnormal, particularly with respect to year-end adjustments for wages and taxes, as set forth and illustrated by the affidavit of one Doris S. Whitnack, attached hereto and made part hereof, and as shown by Table IV and the graph which is part of said affidavit. Said findings of the Commission therefore are arbitrary and capricious.
- (d) In said report, the Commission stated that the relation of net railway operating income to investment in railway property, including cash, materials, and supplies for seven principal Kentucky railroads, reflected average rates of return, after Federal income taxes, as follows: 1938, 2.98 percent; 1939, 3.76 percent; 1940, 3.95 percent; 1941, 5.41 percent; and 1942, 5.78 percent. The Commission then stated that the evidence before it did not indicate that the passenger traffic of these railroads as a group is producing more than a fair return. The Commission erred in this latter statement; however, for the reason that there was evidence of record to indicate that such passen-

ger traffic is producing more than a fair return. Exhibits Nos. 12 and 17, introduced as evidence in the [fol. 2322] hearing mentioned in paragraph 6 hereof, show that the rate of return for seven principal Kentucky railroads from net railway operating income before deduction of Federal income taxes, for the 12 months ended June 30, 1943, was 18.11 percent of a base consisting of the book investments of said railroads, plus cash, materials and supplies, less accrued depreciation and accrued amortization of defense projects as of December 31, 1942.

- (e) There is no evidence in the record before the Commission supporting the Commission's statement in said report that the rates of return found by the Commission were based upon investment in railway property for the seven principal Kentucky railroads. To the contrary, the statistician witness for said railroads admitted at the said hearing that the said investment figure was not the investment of said carriers, but included the investment of others in the property used by said carrier (see Transcript of Testimony of said hearing at page 126-127).
- (f) In considering the aforesaid rates of return set forth in the said report, the Commission erred, as a matter of law, with respect to its finding of the fairness of returns from passenger traffic, for the reason [2323] that the said investment in railway property, mentioned in the preceding subsection of this paragraph, includes no deduction for accrued depreciation (see Transcript of Testimony at page 104).
- (g) In making such a finding with respect to the fairness of the above stated rates of return, the Commission erred, as a matter of law, for the reason that it did not consider not revenues of the Kentucky railroads prior to deduction of wartime income taxes. At said hearing before the Commission, the statistician witness for the railroad respondents admitted that about 80 percent of the increased revenues which would result from increases of Kentucky intrastate coach fares, to the corresponding level of the interstate fares, would be paid in taxes, mostly to the United States Government (see Transcript of Testimony at page 122).

The said order of May 8, 1944, mentioned in paragraph 9 hereof, having been based upon errors of law and arbitrarily stated and considered facts, transcends the Confinission's constitutional and statutory powers, and is unlawful; void, and of no effect.

- 17. The maintenance of passenger coach fares to, from, and between points in Kentucky in interstate and intrastate commerce, upon the general basis of 1.65 cents per [fol. 2324] mile under present conditions would not impose an undue burden upon or undue injury to interstate or foreign commerce.
  - (a) In Passenger Fares and Surcharges, 214 I. C. C. 174, decided February 28, 1936, the Interstate Commerce Commission found that the existing passenger coach fares in the Southern Territory and Kentucky, on the general basis of 1.5 cents per mile in interstate commerce, were not unreasonable or otherwise unlawful. With the 10 percent increase authorized by said Commission in Increased Railway Rates, Fares, and Charges, 1942, 248 I. C. C. 545, 565, 566, said fares were established on February 10, 1942, in interstate and intrastate commerce in Kentucky, on the general basis of 1.65 cents per mile.
  - (b) As shown by the attached affidavit of one Doris S. Whitnack, with accompanying tabulations, attached hereto and made part hereof, the 1943 rate of return for 10 Kentucky railroads, from net railway operating income prior to deduction of Federal income taxes, but after deduction of rent for leased railroads, was 17.50 percent of the book investments of said railroads, plus cash, materials and supplies, less accrued depreciation and accrued amortization of defense projects, as of December 31, 1943. The 1943 operating ratios for the same railroads were 58.20 and 57.79 percent—for their passenger and freight [fol. 2325] services, respectively.
  - (c) As also shown by the said affidavit, the cost of the passenger service in coaches for 10 principal Kentucky railroads was about .80 of one cent per mile for 1943, as compared with the present intrastate fares upon the basis of 1.65 cents per mile, and the interstate level of fares upon the general basis of 2.2 cents

and 1.98 cents per passenger mile one-way and round trip, respectively.

(d) By reason of the aforesaid differences between the costs and fares per passenger mile in coaches for the said Kentucky railroads, under present conditions there is no advantage or preference nor disadvantage, prejudice, or discrimination to persons or localities in interstate commerce, as found by the Commission, which cannot be removed lawfully by reduction of the said interstate passenger coach fares to, from, and through Kentucky to the aforesaid level of the interstate fares.

There being no undue burden upon interstate or foreign commerce to, from, and between points in Kentucky from maintenance of passenger coach fares, in interstate or intrastate commerce, at the level of the Kentucky intra-[fol. 2326] state coach fares, there is no Constitutional jurisdiction (Article I, Sec. 8, cl. 3, and the 10th Amendment) in the United States government to require increases of passenger coach fares in Kentucky, in intrastate commerce, above the level authorized by the Railroad Commission of Kentucky for intrastate commerce. The said corrected order of the Interstate Commerce Commission dated May 8, 1944, as described in paragraph 10 hereof, therefore transcends the Commissions constitutional or statutory powers, and is unlawful, void and of no effect.

18. In said report of March 25, 1944, mentioned in paragraph 8 hereof, the Interstate Commerce Commission erred, as a matter of law, in its determinations with respect to undue advantage or preference to persons and localities in intrastate commerce and undue disadvantages or prejudices to persons or localities in interstate commerce, in that part of said report subtitled "Undue advantage, preference, or prejudice. The mere existence of a disparity in rates between intrastate and interstate commerce, for substantially the same service on trains available to both interstate and intrastate passengers, does not justify the conclusion that any advantage or preference to persons or localities in intrastate commerce or disadvantage or prejudice to persons or localities in inter-[fol. 2327] state commerce is undue or unreasonable. The said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, having been based upon error of law, therefore transcends the Commission's constitutional and statutory powers, and is unlawful, void, and of no effect.

19. In said report of March 25, 1944, mentioned in paragraph 8 hereof, the Interstate Commerce Commission erred, as a matter of law, in its determination with respect to discrimination by the intrastate fares against interstate or foreign commerce, in that part of the report subtitled "Unjust discrimination".

- (a) The statements in said part of the report were with respect to discriminations against persons or localities, and not with respect to revenue discrimination, if any there be, against interstate or foreign commerce.
- (b) The statements in said part of the report are mere reporterial descriptions of the evidence consisting of the opinions of the railroad respondents in the proceedings before the Commission and of the witnesses on their behalf, and do not constitute findings of basic fact.

[fol. 2328] (c) The statements in said part of the report do not show that any discrimination causes any result which is undue, unreasonable or unjust.

The said corrected order May 8, 1944, mentioned in paragraph 10 hereof, having been based upon error of law, therefore transcends the Commission's constitutional and statutory powers, and is unlawful, void, and of no effect.

- 20. The Interstate Commerce Commission erred, as a matter of law, in its sixth enumerated finding that maintenance of intrastate fares in the State of Kentucky on a lower level than the corresponding interstate fares causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantages to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce.
  - (a) Said finding is in violation of the Tenth Amendment to the United States Constitution, for the reason that the power is reserved to said State to determine whether intrastate fares, lower than correspond-

ing interstate fares, are reasonable or unreasonable for intrastate commerce.

- [fol. 2329] (b) Said finding is erroneous, as a matter of law, for the reason that the Commission failed to find that said advantage or preference from the aforesaid intrastate fares, or disadvantage or prejudice from the interstate fares, if any there be, causes any result which is undue or unreasonable as between any persons or localities in intrastate commerce on the one hand, and persons or localities in interstate or foreign commerce on the other hand.
- (c) Said finding with respect to discrimination against interstate commerce, if any there be, is based upon the error of law that the Commission may require equally proportionate profits for railroads from intrastate and interstate commerce. Said finding violates the Tenth Amendment to the United States Constitution which reserves to said State the power of determining the reasonableness of the remuneration from intrastate fares within said State.

The said corrected order of May 8, 1944, having been based upon errors of law, therefore transcends the Commission's constitutional and statutory powers, and is unreasonable, void, and of no effect.

[fol 2330] 21. In said report of March 25, 1944, mentioned in paragraph 8 hereof, the Interstate Commerce Commission erred, as a matter of law, in its first enumerated finding that the present basis of passenger coach fares, in interstate commerce, to, from, and through Kentucky is just and reasonable, for the reason that such conclusion is not in accordance with the requirements of section 15a of the Interstate Commerce Act.

(a) The Commission failed or refused to be governed by the effects of the increases of fares, over the level in effect on September 15, 1942, upon the movement of traffic by Kentucky railroads under normal or peacetimes conditions as described in paragraph 11(c) hereof, but instead based its decision upon changed wartime economic conditions which permitted the increases of fares.

- (b) In said report the Commission made statements with respect to the endeavor of the railroads to discourage unnecessary travel in cooperation with the Office of Defense Transportation, to avoid the rationing of passenger travel which would tend to be encouraged by reduction in standard passenger fares. In contradiction thereof, however, the Commission found that passenger coach revenues of all Class I Ifol. 23311 railroads in the southern region increased 128.5 percent in the first 10 months of 1943 as compared with the corresponding period for 1942, and also found (finding No. 5) that the revenues of the Kentucky railroads under the lower Kentucky intrastate fares are less by at least \$500,000 per annum than said revenues would be if those intrastate fares were increased to the level of the corresponding interstate fares.
- (c) The Commission failed or refused to consider "the need, in the public interest, of adequate and efficient transportation service at the lowest cost consistent with the furnishing of such service", as required by Section 15(a) of the Interstate Commerce Act. The data in paragraph 11(c) hereof indicates by approximation that in 1942 such unit cost of passenger service in coaches was about 1.25 cents per passenger mile as compared with the Kentucky intrastate rate of 1.65 cents and the interstate rate of 2.2 cents per mile (revenue per coach mile—52.02¢, multiplied by ratio of passenger service expenses to revenues—74, divided by passenger miles per coach mile—30.85, equals 1.25).

[fol. 2332] (d) The Commission erroneously considered the need of added revenue by Kentucky railroads for the purpose of recouping for passenger service deficits from 1936 to 1941, iclusive; and failed or refused to consider that the Commission had previously established freight rate levels for the purpose of supporting the passenger service and compensating for such deficits, as mentioned in paragraph 16(b) hereof, which support factor in freight rates has been multiplied by the wartime increase of freight traffic.

(e) In derogation of the requirements of said section 15(a), the Commission held that "the most helpful evidence in determining the reasonableness of rates or fares is comparison with other rates or fares for like services". In making such a holding the Commission erred as a matter of law.

The said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, having been based upon errors of law, therefore transcends the Commission's constitutional and statutory powers, and is unlawful, void, and of no effect.

- 22. Said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, is unlawful for the reason that the [fol. 2333] minimum fares required by said order for intrastate coach transportation in Kentucky were not established upon the general basis of the minimum reasonable fares for interstate transportation to, from, and through Kentucky. Said order requires that the said minimum intrastate fares be established upon the general basis prescribed by the Interstate Commerce Commission for maximum reasonable fares for interstate transportation of passengers in coaches to, from, and through Kentucky.
- 23. By said report of March 25, 1944, and the orders of May 8, 1944 mentioned in paragraphs 8, 9, and 10 hereof, the Interstate Commerce Commission has failed to recognize, as a consideration justifying the maintenance of the intrastate passenger fares at a level lower than the interstate fares, that in denying increases of intrastate rates, fares and charges over those in effect on September 15, 1942, the Railroad Commission of Kentucky was acting in aid of the effective prosecution of the war in accordance with the policy of Congress as expressed in the said Stabilization Act of October 2, 1942, and as requested of the Railroad Commission by the President in said Excutive Order 9328 as set forth in paragraph 3 hereof. The said report and orders of the Interstate Commerce Com-[fol. 2334] mission therefore interfere with the cooperative efforts of the Railroad Commission of Kentucky to aid in the effective prosecution of the war, contrary to the intention of Congress. The said corrected order of May 8, 1944, having been issued contrary to the intentions

and desires of Congress transcends the Commission's constitutional or statutory powers, and is unlawful, void, and of no effect.

- 24. Unless said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, is restrained and permanently enjoined and set aside, your petitioners will be caused great and substantial injury in the performance of their duties under the Stabilization legislation.
  - (a) The increased fares will add to the cost of living and will be inflationary to the detriment generally of the wartime program to stabilize prices, rents, and wages.
  - (b) Common carriers and public utilities will be encouraged to make inflationary increases of intrastate rates and to take advantage of wartime conditions to make excessive and unprecedented profits.
  - (c) State and municipal regulatory agencies will be discouraged from cooperation in the wartime stabilization program to the end of maintaining rates; fares, and charges in intrastate commerce, in effect in Sep-[fol. 2335] tember 15, 1942, which are less than those applicable to interstate commerce, which action may be overruled by the Interstate Commerce Commission to conform intrastate rates, fares, and charges to the interstate levels.
  - 25. Plaintiff herein has no adequate remedy at law. Wherefore, your petitioner says:
    - First: That his petition be heard by a three judge court at the earliest available date, and that the constitutional and judicial matters be tried de novo with respect to the allegations of paragraph 17 hereof.
    - Second: That pending the final hearing of this cause, the court issue an interlocutory injunction and restraint enjoining said railroads from complying with said corrected order of May 8, 1944, mentioned in paragraph 10 hereof.
    - Third: That upon final hearing the court adjudge, order, and decree that said corrected order of May 8, 1944, mentioned in paragraph 10 hereof, is and at all.

times has been in violation of the Interstate Commerce Act by reason of the Commission's failure properly to interpret and apply its constitutional and statutory authority to protect interstate commerce from undue and unreasonable burdens from intrastate commerce, [fol. 2336] and its failure to accommodate the exercise of its powers to the Congressional policies embodied in the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942; and that said corrected order is and has been beyond the lawful authority of the Interstate Commerce Commission, and wholly null and void; and that said corrected order be perpetually set aside and annulled, and the enforcement thereof perpetually enjoined.

Fourth: That the court grant to your petitioner such other relief as may be proper in the premises.

Respectfully submitted, Fred M. Vinson, Director of the Office of Economic Stabilization, by Chester Bowles, Price Administrator of the Office of Price Administration; Richard H. Field, General Counsel, Office of Price Administration; David F. Cavers, Assistant General Counsel, Office of Price [fol. 2337] Administration; Bernard M. Fitzgerald, Transportation Counsel, Transportation and Public Utilities Division, Office of Price Administration; M. D. Miller, Attorney, Office of Price Administration, 5319 Federal Office Building No. 1, 2nd and D Streets, S. W., Washington 25, D. C.

[fol. 2338] Duly sworn to by M. D. Miller. Jurat omitted in printing.

(Complaints similar in form and intent, omitted in printing, were filed in Cases No. 706 and 707.)

[fol. 2339] DISTRICT OF COLUMBIA:

# AFFIDAVIT OF DORIS S. WHITNACK

Before me, a notary public in and for the District of Columbia, personally appeared Doris S. Whitnack, who being by me first duly sworn deposes and on oath says:

- 1. That she is a resident of the District of Columbia and since July 1941 has been employed as an Economist with the Transportation Branch of the Transportation and Public Utilities Division of the Office of Price Administration, and for about four years has had experience in economics and statistical work involving use and examination of the statistical and accounting reports filed by railroads with the Interstate Commerce Commission.
- 2. That on September 9, 1943, she testified at the hearing in Frankfort, Kentucky, in the proceeding before the Interstate Commerce Commission in No. 29000, Kentucky Intrastate Coach Fares, giving evidence relating to Exhibits Nos. \$\frac{1}{2}\$ to 17, inclusive, in that proceeding.
- 3. That she has prepared the Tables I, II, III, attached hereto, and from the data set forth in the 1943 annual reports of the railroads named in said tables, filed by said railroads with the Interstate Commerce Commission; [fol. 2340] that she has prepared Table IV and the graph attached thereto from the monthly reports of the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission; and she states that the data and computations in said tables are true and correct to the best of her knowledge, information, and belief.
- 4. That the 1943 rate of return for the ten Kentucky railroads, named in Table I attached hereto, from total 1943 net railway operating income of said railroads before Federal income taxes, but after deduction of rents for leased road, was 17.50 percent of a total of said railroads book investments, plus cash, materials and supplies, less accrued depreciation and amortization of defense projects applicable to said book investments, as of December 31, 1943.
- 5. That the 1943 operation ratios for the ten Kentucky railroads, named in Table II attached hereto, were 58.20

percent and 57.79 percent for their passenger and freight services, respectively.

- 6. That during 1943, the average cost of the passenger service in coaches by seven principal Kentucky Class I railroads, named in Table III attached hereto, was about 80 of 1 cent per mile.
- [fol, 2341] 7. That the figures set forth in Table IV are truly represented by the graph attached hereto.
  - (S.) Doris S. Whitnack.
  - Sworn to and subscribed before me this 30th day of June, 1944. (Signed) Eugene R. Wood, Sr., Notary Public. My commission expires Nov. 30, 1946.

Prior to Deduction of Federal Income Taxes lass I Railroads Operating in Kentucky

	Rate Base	Base		Operating In-	Return on	u ou
	Plaintiff's Base as of Dec. 31, 1943	Railroads' Base as of Dec. 31, 1943	Net Railway Operating Income 1943	for Leased Roads 1943	Plaintiff's Base	Railroads' Base (7)
(1) *Chesapeake and Ohio Ry. Co	(2) \$510,242,210	(3) \$645,145,090 75,701,566	\$86,159,840 5,928,597	\$86,110,171 3,755,364	16.88%	13.36%
2. Clinchfield RR Co S. Cincinnati, New Orleans and Texas Pacifical Pr. Co.	57,031,383	923		235		9.18
4. •Gulf, Mobile and Ohio RR Co. 5. •Illinois Central RR Co.	362	388	280	332 488		15.26
6. *Louisville and Nashville RR Co. 7. *Nashville, Chattanooga and St. Louis By. 8. Norfolk and Western Ry. Co.	61,670,971	78,706,348	13, 179, 662 64, 637, 600 99 367, 757	64, 637, 360 89, 371, 657	16.43	13.89
9. Southern Railway Co. O Tennassee Central Railway Co.	477	628	8	974-760	=	9.41
Totals: Seven Principal, Railroads in Kentucky	\$1,921,760,952	\$2,740,317,291 3,304,676,833	\$355,763,042	\$345,610,538 417,978,022	18.14%	12.88%
Ten Railroads Above	ree Commission fo	r the Year Ended 701, 702, 12A,	December 31, 1, 702-12B, 708, 7	943, for each car 716 less Account	s 775-1/2, 776,	8, 776-1/2.

(Here follows 1 Paster, side folio 2343) .

Table II Revenues, Expenses and Service Operating Ratios
Class I Railroads Operating in Kentucky
1943

	Total Operation	g ·	Assigne	d to Freight Sei	rvice	Assigned	to Passenger S	ervice	
Railroad (1)	Revenues Expenses (2) (3)	Operating Ratio (4)	Revenues (5)	Expenses (6)	Operating Ratio (7)	Revenues (8)	Expenses (9)	Operating Ratio (10)	
*Chesapeake & Ohio Ry. Co. Clinchfield RR Co. *Cincinnati, New Orleans & Texas Pacific Ry. Co. *Gulf, Mobile & Ohio RR Co. *Illinois Central RR Co. *Louisville & Nashville RR Co. *Nashville, Chattanooga & St. Louis Ry. Norfolk & Western Ry. Co. *Southern Railway Co. Tennessee Central Railway Co.	\$208.512.535 \$115.645.2 *12.796.775 6.201.8 37.213.864 19.763.9 37.858.695 24.720.0 213.010.308 37.45.4 208.799.302 118.152.4 42.284.020 26.459.0 150.164.921 84.395.6 245.532.051 136.604.1 4.841.515 3.435.7	34 48.46 05 53.11 15 65.30 62 64.38 34 56.59 60 62.57 41 56.20 53 55.64	\$182,835,859 12,583,264 28,525,076 34,634,239 170,473,069 154,592,230 31,695,829 130,778,189 176,593,635 4,052,015	\$95,578,519 5,963,934 15,437,000 22,029,844 107,819,079 90,458,542 20,489,948 72,029,854 102,959,676 2,821,194	47 40 54 12 63 61 63 25 58 51 64 65 55 08 58 30	\$25,676,676 213,511 8,688,788 3,213,098 42,537,239 54,207,072 10;588,191 19,386,732 68,938,416 789,500	\$19,466,746 237,900 4,326,905 2,678,577 29,326,383 27,693,20 5,969,112 12,365,787 33,644,477 614,609	117 42 49 80 83 36 68 94 51 09 56 38 63 78 48 80	
Totals:  * 7 Principal Railroads in Kentucky.  10 Railroads Above.	\$993,210,775 T,161,013,986 \$577,890,2 671,923,4		\$779,349,937 926,763,405	\$454,772,608 535,587,590		\$213,849,480 234,239,223.	\$123,106,092 136,324,388		

Sources: Annual Report to the Interstate Commerce Commission for the Year Ended December 31, 1943, for each carrier named.
Cols. 2, 5, and 8—Schedule 310, p. 303.
Cols. 3, 4, 6, 7, 9, and 10—Schedule 320, p. 312–313.

				-
	•		1	Formania par
		8		
•				-
	• •		9	
- ,				1
				-
		Seven Principal Class I Railroads Operating in Kentucky		
		nta		
		Ke		
	N	=		
	že.	ing	*	
	Sen	erat		
-	Pas	0	4	
Ξ	45	spu		
ple	500	ilro	\$	
Table III	Estimate of Unit Cost per Coach Passenger-Mile	2		
	st.	- 88		
	ವ	Cha	9	
	E	pa		
	10	nei		1
	ate	P		
•	E.	ven	63	
	E	3		
			10	
•				
. *		•		
			1 -	
		1		
			3	
4			R	
ol. 2344]			1	
0			1	

		Expenses				Passenger	Passenger .	Passen
		Assenger Passenger	Passenger	Miles in		Coach Mile	Coach	Coact
	Railroad	Service				(cents)	Car-Mile	(cent
-	Chesapeake & Ohio	.\$19,466,746	. 57, 483,871	804,532,382	23, 490, 670	33.86¢	24.25	8,
C)	2. Cincinnati, New Orleans & Texas	4.326.905	16.726.936		6.474.356	25.87	41.05	9
60.	3. Gulf, Mobile, & Ohio	2.678,577	8,147,851	94,729,819	3,567,029	32.87	26.56	1.2
4.	Ullinois Central & Tazoo & Miss.	504.793	109,585,356	-	46,190,657	30.57		1.2
10	5. Louisville & Nashville	27,693,892	100, 426, 795	1,800,542	39, 227, 465	27.58	45.90,	30
0	St Louis	112	21,575,993	314	7,126,584	27.67		9
1-	7. Southern	33.644,477	120, 411, 468	1,916,816,426	47,278,298	27.94	40.54	9.
00	Total \$127, 284, 302 434, 358, 270 6, 312, 452, 372 177	\$127,284,502	434,358,270	6,312,452,372	3,355	29.30€	36.41	æ
	Sources: Reports of the carriers it	dicated to the	Interstate Con	nmerce Commission	uc			

#### Table IV

Operating Expenses and Net Railway Operating Income Before and After Federal Income Taxes, by Months June, 1942-1943 Through February, 1944

	+4	Class I Railw	ays in the South	nern Region	1
June		Railway Operating Expenses	Net Railway Operating Income After All Taxes	Federal Income	Net Railway Operating In- come Before Federal In- come Taxes
		\$60,463,037 50,339,930	\$15,713,303 17,443,165.	\$21,071,532 12,844,708	\$36,784,835 30,287,873
		200%			. 21.5%
July					•
19		51,584,250	\$14,289,639 16,262,199	\$20,337,243 15,010,460	\$34,626,882 31,272,659
	hange from ious month	20.0%	-12.1%	35.5%	10.7%
Aug				1	- 4
19	42	\$61,805,523 52,892,619	. 17,095,378	16,648,887	\$38,059,342 33,744,265
prev	hange from ious month.	16.7%	-7.4%	33.5%	12.8%
	ember				
2 (	hange from	\$61,999,157 53,086,481 16.8%		15,562,272	
		10.070	20.070		
19	42		\$14,855,619 21,553,216	\$19,915,085 14,830,113	\$34,770,704 36,383,329
% C	hange from ious month	12.6%	-31.1%	34.3%	-4.4%
	ember	1			
19	43	\$62,724,150 55,442,490	23,089,442	13,527,971	\$35,500,007 36,617,413
	ious month:	13.1%	-33.7%	49.3%	-3:1%
[fol.	2346]	- >	1./		,
	ember		/		
19	43 42 hange from	\$79,033,667 62,355,103			
prev	ious month	26.7%	61.4%	210.9%	-22.2%
Jan	•				
- 15	44 43 hange from		18,231,591	\$18,823,172 17,863,590	36,095,191
pres	ious month.	14.5%	-21 0%	5.4%	-7.9%

#### Table IV

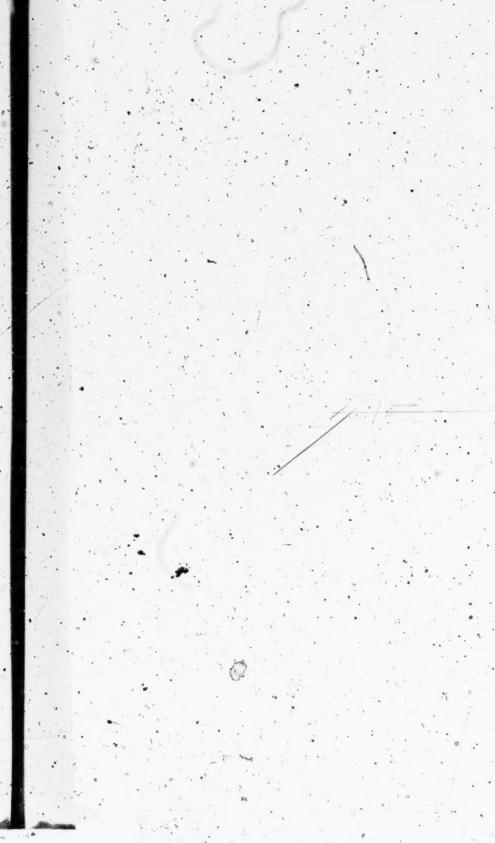
Operating Expenses and Net Railway Operating Income Before and After Federal Income Taxes, by Months June, 1942-1943 Through February, 1944

. Class I Railways in the Southern Region

	Railway Operating Expenses	Net Railway Operating Income After All Taxes	Federal Income Taxes	Operating Income Before Federal Income Taxes	
February			3 -		
1944	\$65,716,851 56,215,003	\$15,555,855 18,566,605	\$20,512,635 18,775,907	\$36,068,490 37,342,512	
% Change from	16.9%	-16.2%	9.2%	-3.49	,

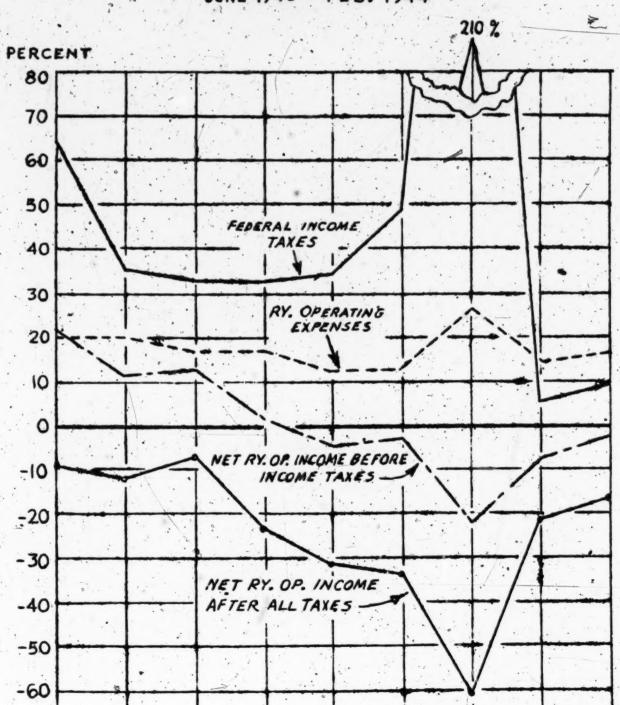
Source: Operating Revenues and Operating Expenses of Class I Steam Railways in the United States, Interstate Commerce Commission, Bureau of Transport Economics and Statistics, Statement No. M-100, for the Months of June, 1943 Through February, 1944.

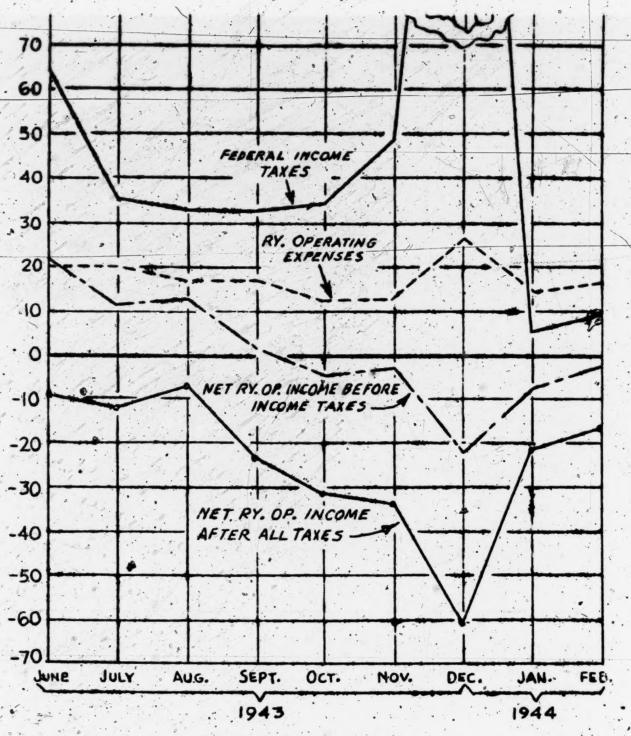
(Here follows 1 photolithograph, side folio 2347)



# CHANGE FROM CORRESPONDING MONTH IN THE PREVIOUS YEAR EXPENSES, TAXES AND OPERATING REVENUE OF CLASS I RAILROADS IN SOUTHERN REGION JUNE 1943 - FEB. 1944

. 3.





SOURCE: Monthly Reports of ICC, Bureau of Transport Economics and Statistics

# [fol. 2348] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, AND RAILBOAD COMMISSION OF KENTUCKY, Plaintiffs,

UNITED STATES OF AMERICA, Defendant

# ORDER GRANTING INTERVENTION

The foregoing petition of Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, to intervene as Plaintiff in the above stated cause is granted.

This 6th day of July, 1944.

Shackelford Miller, Jr., District Judge.

(Similar orders, omitted in printing, were entered in Cases No. 706 and 707.)

[fol. 2349] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 708

COMMONWEALTH OF KENTUCKY, AND RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

vs.

United States of America and Interstate Commerce Commission, Defendants

Answer of the United States of America—Filed July 7, 1944

Now comes the United States of America, a defendant herein, by counsel, and in answer to the complaint says:

T

Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, has filed a motion to intervene as a plaintiff in this case and has also filed an intervening complaint seeking to have the order of the Interstate Commerce Commission here involved set aside.

## Ш

A situation is thus presented where one Government agency is seeking to intervene as a party plaintiff in this case and another Government agency, the Interstate Commerce Commission, is a defendant in the same case. Under these circumstances, and in view of the fact that both Government agencies will have an opportunity to present their respective position through their own counsel, the United States has determined to remain neutral in these proceedings in the District Court, without prejudice to its supporting the position of one or the other agency in any appeal which may be taken from the decree of this court.

[fol. 2350]

Ш

Accordingly, the United States neither admits nor denies any of the allegations of the complaint of the above plaintiffs or the intervening complaint of the Economic Stabilization Director.

> (S.) Eli H. Brown, III, United States Attorney; (S.) Robert L. Pierce, Special Assistant to the Attorney General.

# Certificate of Service

I hereby certify that a copy of the above answer of the United States has been served upon each of the following named counsel this 7th day of July, 1944:

Eldon S. Dummit, Esq.

Attorney General of Kentucky

State Capitol

Frankfort, Kentucky

M. B. Holifield, Esq.

Assistant Attorney General of Kentucky

State Capitol

Frankfort, Kentucky

Allen B. Crenshaw, Esq.

Interstate Commerce Commission

Washington 25, D. C.

Charles Clark, Esq.
Southern Railway System
Washington 13, D. C.

M. D. Miller, . Esq.

Room 5319

Federal Office Building, No. 1

Washington 25, D. C.

Frank W. Gwathmey, Esq. Shoreham Building

Washington, D. C.

E. D. Mohr, Esq.

Louisville & Nashville R. R.

Louisville, Kentucky

Eli H. Brown, III, United States Attorney.

[fol. 2351] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, AND RAILBOAD COMMISSION OF KENTUCKY, Plaintiffs,

United States of America and Interstate Commerce Commission, Defendants

Intervention of Interstate Commerce Commission—Filed.

July 10, 1944

To the Honorable the Judges of Said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Tit. 28, Sec. 45a), providing, in part, "that the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement," we hereby enter the appearance of the Interstate Commerce Commission as a

party defendant, and of ourselves as its counsel, in the above-entitled suit.

Interstate Commerce Commission. By: Daniel W. Knowlton, Chief Counsel, Allen Crenshaw, Attorney.

July 6, 1944.

[fol. 2352] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, AND RAILBOAD COMMISSION OF KENTUCKY, Plaintiffs,

V.

United States of America and Interstate Commerca Commission, Defendants

Answer of Interstate Commerce Commission—Filed July 10, 1914

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-entitled action, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' complaint contained, and in the complaint of intervenors, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

1

Answering the allegations of paragraphs I, II, III, IV, V, and VI of plaintiffs' complaint, the Commission admits court jurisdiction of the action herein and of the parties thereto.

411

The Commission admits that the plaintiffs herein have a legal right to maintain this action, and that intervenors are proper parties thereto.

Further answering other allegations of the complaints, the Commission alleges that proceedings, directly and im-[fol. 2353] mediately concerned in the orders herein involved, were instituted upon the filing of petitions in the Commission, by various railroads operating in the State of Kentucky, to wit: the Louisville and Nashville Railroad Company, The Chesapeake and Ohio Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, The Nashville, Chattanooga & .St. Louis Railway, and the · Southern Railway Company, in July, 1943, complaining that intrastate coach passenger fares, to, from, and between points within the State of Kentucky, except as applied to and by the Gulf, Mobile and Ohio and Illinois Central Railroads, other than in instances where those railroads meet lower rates of competing lines, were unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce, in violation of Section 13 (3) and (4) of the Interstate Commerce Act, seeking under Commission authority, to have such advantage, preference, prejudice, or discrimination removed, as might be found to exist, and to determine what fares and charges, if any, or what maximum or minimum, or maximum and minimum fares and charges should be prescribed, to remove such advantage, preference, prejudice, or discrimination; said petitions were given Docket No. MG-29000 and hearings were held thereon before an examiner of the Commission at Frankfort, Ky., on September 8 and 9, 1943, at which time evidence was received as submitted by the various parties interested therein, including plaintiffs herein, and thereafter the several parties to the proceedings filed briefs with, and orally argued before the Commission, matters involved in said proceedings, following which the Commission entered its report of March 25, 1944; thereafter plaintiffs filed petition for reopening, [fol. 2354] reargument, and reconsideration of the report of March 25, 1944, which petition was denied by order dated May 8, 1944; under corrected order issued May 24, 1944, rail carrier respondents in the above proceedings were required to establish on or before July 1, 1944,

later extended to August 1, 1944, and to thereafter maintain and apply, passenger fares for intrastate transportation in Kentucky, and in the States of Alabama, North Carolina, and Tennessee, also involved in said proceedings under the same report and order, on a basis no lower than the passenger fares presently maintained and applied by the respective respondents, for like accommodations in interstate transportation to, from, and through the said states, and providing that the resulting aggregate charge, made by any of said respondents for intrastate transportation in any of the said states, shall not exceed the aggregate charge made for like accommodations for a like distance by the same respondents in interstate transportation to, from, or through such states.

The Commission further alleges that the proceedings, report, and orders here involved, indirectly and collaterally relate to previous consideration, decisions, and orders of the Commission, in respect to the determination of reasonable passenger fares in interstate commerce, particularly with reference to such fares in Southern Passenger Association territory, generally located east of the Mississippi River and south of the Ohio and Potomac Rivers, such consideration and decisions covering a period of many years prior to the report involved in this action, a summary of that previous consideration, and of reports and orders issued in connection therewith, being set forth in the Commission report of March 25, 1944, 258 L. C. C. 133, at pages 134, 135, 136, and 137, ander the heading of "History of Rail Fares." Such interstate fares, so determined by the Commission as reason-[fol. 2355] able, provide the basis of comparison, standard or relation to the intrastate fares here involved. Previous Commission consideration of such interstate fares discloses that passenger fares in said southern territory for many years, up to June 10, 1918, were generally 2.5 cents per mile in all classes of equipment, on which last-named date, the Director General of Railroads increased the fare to 3 cents per mile in all classes of equipment, which said increased fare remained in effect, except that from June 10 to November 30, 1918, an additional charge of 16% percent of the one-way fare was assessed for travel in sleeping and parlor cars, until August 25. 1920, when fares generally were raised to 3.6 cents per

mile in all classes of equipment, plus a surcharge in sleeping and parlor cars; that during 1932 and 1933 certain rail carriers operating in southern territory experimented with lower fares, in attempts to attract passenger business in competition with private automobiles and busses, as set forth in said report of March 25, 1944, at pages 134 and 135; the said higher passenger fares of 3.6 cents per mile, established August 26, 1920, with exception of the experimental lower fares established by certain rail carriers, remained in effect until February 28, 1936, when the Commission by its report in Passenger Fares and Surcharges, 214 I.C.C. 174, reviewed railroad passenger fares throughout the nation, found the basic fares to be unreasonable, and prescribed maximum reasonable fares of 2 cents per mile, oneway and round-trip in coaches, and 3 cents per mile one-way and round-trip in Pullman cars, without prejudice to the maintenance of lower fares in coaches or Pullmans, and finding that the Pullman surcharge was unreasonable, requiring the same to be canceled, and finding that the existing experimental fares in southern territory were not unreasonable or otherwise unlawful; that on November 15, 1937 tarriers maintaining the experimental coach fares of 1.5 cents, in-[fol. 2356] creased that fare to 2 cents per mile, but restored the 1.5-cent fare on January 15, 1939, with certain southern lines, including Illinois Central, Mobile and Ohio, St. Louis-San Francisco, and Norfolk and Western Railway, which said lines retained the 2-cent basis, with some exceptions in meeting competition of other lines.

In a proceeding designated as Ex Parte 148, instituted at the instance of the railroads, the Commission by order of January 21, 1942, authorized a 10 percent increase in passenger fares, held to be reasonable and otherwise lawful, and necessary to enable the rail carriers to render adequate and efficient transportation service during the national emergency, the said report being entitled Increased Railway Rates, Fares, and Charges, 1942, 248 I.C.C. 545, 565, 566. Under the 10 percent increase of passenger fares the reestablished coach fares of 1.5 cents, which had remained in effect until February 10, 1942, became 1.65 cents, and fares of 2 cents became 2.2 cents and fares of 3 cents became 3.3 cents, with round-trip fares modified to reflect the increases in the one-way fares, such increased fares upon various subsequent dates having also become effective on intrastate traffic in all states. Upon petition of rail carriers in south-

-

ern territory filed July 14, 1942, the Commission authorized such carriers to increase the lower interstate passenger fares in coaches in that territory to 2.2 cents a mile, the order being entered on August 1, 1942, and such increased fares were published to become effective October 1, 1942. and have since remained in effect on interstate traffic. Thereafter, with the approval of the regulatory authorities of the States of Florida, Georgia, Louisiana, Mississippi, Virginia, and South Carolina, the intrastate one-way and round-trip coach fares and the round-trip fares in sleeping and parlor cars, were increased to the respective levels of of the corresponding interstate fares, and the regulatory anthorities of Alabama, North Carolina, Tennessee and Kentucky declined to authorize the increases, sought by the offol. 2357] rail carriers, in one-way and round-trip coach fares, and Alabama and Tennessee also declined to authorize increase in the round-trip fares in sleeping and parlor The refusal of the States of Alabama, North Carolina, Tennessee, and Kentucky to authorize the increases of passenger fares to the level of the interstate fares, was the basis of petitions of rail carriers, in the proceedings herein involved, that the resulting differential in favor of intrastate fares, as compared to the interstate fares, results in a violation of Section 13 (3) and (4) of the Act.

The report of March 25, 1944, embraced, considered, and decided the subject of proceedings in No. MC-29000, Kentucky Intrastate Fares, and also No. MC-29036, North Cardina Intraslate Coach Fares, No. MC-29037, Tennessee Intrastate Fares, and No. MC-28963, Alabama Intrastate. Fares, and found, (1) that interstate one-way and roundtrip coach fares in effect to, from, and through points in Alabama, Kentucky, North Carolina, and Tennessee, and interstate round-trip fares in sleeping and parlor cars in effect to, from, and through points in Alabama and Tennessee are just and reasonable, (2) that intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain designated exceptions, and intrastate round-trip fares in sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding applicable interstate, and intrastate throughout southern territory, except as to the states named, (3) that conditions affecting the transporation of passengers in coaches in the said four states, and in sleeping and parlor cars in Alabama and Tennessee, intrastate, on the

one hand, and interstate to, from and through those respective states, on the other, are substantially similar, (4) that interstate passengers in these states travel in the same trains, and generally in the same cars with intrastate passengers, but are forced to pay higher fares than the intrastate passengers for like services, to the undue and un-[fol. 2358] reasonable advantage and preference of intrastate passengers, and the undue and unreasonable disadvantage and prejudice of interstate passengers, (5) that respondent rail carriers, revenues under the lower intrastate fares, are less by at least \$725,000 per annum in Alabama, \$500,000 in Kentucky, \$525,000 in North Carolina, and \$525,-000 in Tennessee, than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues, required to enable respondents to render adequate and efficient transportation service; and (6) that the maintenance of such intrastate fares, to the extent that they are lower than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable and unjust discriminations against interstate commerce, and that this unlawfulness should be removed by increasing the said intrastate fares in the respective states to the level of the corresponding interstate fares contemporaneously maintained by respondent carriers, to, from, and through such states, provided that the aggregate charge made by any of respondents for the intrastate transportation in any of the states, shall not exceed the aggregate charge made for like accommodations for a like distance by the same respondents for interstate transportation to, from, or through such state. These findings were made without prejudice to the right of authorities of the affected states, or of any interstate party, to apply for modification thereof as to any specific interstate fare, on the ground that such fare is not related to interstate fares in such á way as to contravene the provisions of the Interstate Commerce Act.

[fol. 2359]

IV

The Commission further alleges that the findings and conclusions in said report of March 25, 1944, were and are, and

that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid, and that, in making said report, it considered and weighed carefully, in the light of its own knowledge and experience. each fact, circumstance and condition called to its attention on behalf of the parties to the said proceedings by their respective counsel.

The Commission further alleges that said report and order, above referred to, was not made or entered either arbitrarily or unjustly, or without proof or contrary to the relevant evidence, or without evidence to support it, that in making said report and order the Commission did not exceed the authority conferred upon it by law, and denies, each of and all of the allegations to the contrary contained in the complaints.

Except as herein expressly admitted, the Commission denies the truth of each of and all of the allegations contained in the complaints, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in the said report of March 25, 1944, above referred to.

The Commission specifically denies the allegation con-

tained in paragraphs XXV, XXXIII, and XXXV.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

> Interstate Commerce Commission, by Allen Crenshaw, Attorney; Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 2360] Duly sworn to by Claude R. Porter. Jurat omitted in printing.

ffol. 23611

[File endorsement omitted]

# IN UNITED STATES DISTRICT COURT

Civil Action No. 708

Commonwealth of Kentucky, and Railroad Commission of Kentucky

v.

UNITED STATES OF AMERICA, Defendant ...

MOTION FOR LEAVE TO INTERVENE-Filed July 12, 1944

Come now, under and by virtue of Title 28, U. S. C. Section 45a, The Chesapeake and Ohio Railway Company, The Cheinnati, New Orleans and Texas Pacific Railway Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company, The Nashville, Chattanooga & St. Louis Railway, and Southern Railway Company, and move the court for leave to appear and intervene in the above-stated case and to become parties defendant thereto in order to protect their rights involved in said case.

[fol. 2362] Each of said movants is and for some years has been a corporation engaged in operating a railroad within the State of Kentucky, and by its own rails or in connection with the rails of some one or more of the other movants engaged in operating a line of railroad between points within the State of Kentucky and points in other states within Southern territory; Southern territory is familiarly described and known as embracing those states lying south of the Ohio and Potomac Rivers and east of the Mississippi River;

And as such corporations each of said movants has operated and is now operating as a common carrier of passengers by railroad intrastate within the State of Kentucky and interstate within Southern territory; and as such has been and is subject to the provisions of the Act of Congress known as the Interstate Commerce Act;

And said movants, jointly and severally, are vitally interested in the subject matter of this complaint. They are the common carriers by railroad operating within the State of Kentucky upon whose petition the Interstate Commerce Commission instituted the investigation docketed

No. 29000 in which the report of March 25, 1944, and the orders of May 8, 1944, set out as exhibits C, A, and D to the complaint herein, respectively, were made and issued.

[fol. 2363] And each of said movants desires to here appear and intervene on behalf of defendant, United States of America, and to answer the bill of complaint and par-

ticipate in the trial thereof as a party defendant.

E. A. Smith, Illinois Central System, 135 East 11th Place, Chicago 5, Ill.; H. L. Walker, Chesapeake & Ohio Ry. Co., Richmond 10, Va.; W. L. Grubbs, Louisville & Nashville R. R. Co., Louisville 1, Ky.; Y. D. Lott, Jr., Gulf, Mobile & Ohio R. R. Co., Mobile 5, Ala.; F. W. Gwathmey, 1110 Shoreham Bldg., Washington 5, D. C.; Charles Clark, Southern Railway Office Bldg., 15th & K Streets, N. W., Washington 13, D. C., Attorneys for Movants.

[fols. 2364-2365] ORDER

The foregoing motion read and considered; let the same be filed; and it is further ordered that the motion be allowed and that the movants, and each of them, be and they are hereby made parties defendant in the above-untitled cause.

Shackelford Miller, Jr., United States District Judge.

This 12th day of July, 1944.

[fol. 2366] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY, and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs

UNITED STATES OF AMERICA, Defendant

Answer of Rail Lines, Intervening Defendants-Hiled July 12, 1944

Come now, in due season, rail lines operating in the State of Kentucky, who are intervening defendants herein, and file this, their joint and several answer to the complaint

or petition herein filed by the Commonwealth of Kentucky and the Railroad Commission of Kentucky.

1

These intervening defendants hereby adopt the answer herein filed on behalf of Interstate Commerce Commission, an intervener in said cause, as their answer in the same manner and to the same extent as though each paragraph thereof were herein fully set out.

### H

Further answering, these defendants specifically deny the averments in paragraphs XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXII, XXXIII, XXXIV and XXXV.

# III

Further answering, these defendants deny the allegation in paragraph numbered XXXII, or any inference therein, of defects in the findings of the Interstate Commerce Commission therein referred to.

[fols. 2367-2368] Wherefore, having answered, these intervening defendants pray that the petition or complaint herein be dismissed.

E. A. Smith, Illinois Central Railroad Co., Chicago, Illinois; H. L. Walker, Chesapeake & Ohio Railway Co., Richmond, Va.; W. L. Grubbs, Louisville & Nashville R. R. Co., Louisville, Ky.; Y. D. Lott, Jr., Gulf, Mobile & Ohio Railroad, Mobile, Ala.; F. W. Gwathmey, 1110 Shoreham Bldg., Washington, D. C.; Charles Clark, Southern Railway Office Bldg., 15th & K Streets, N. W., Washington 13, D. C.

[fol. 2369]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 708

COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY Plaintiffs

UNITED STATES OF AMERICA Defendant

Motion to Dismiss—Filed July 17, 1944

Come now the plaintiffs Commonwealth of Kentucky and Railroad Commission of Kentucky, and move the court to dismiss the answer of the intervening defendant, Interstate Commerce Commission, because said answer does not disclose that at the time it rendered its findings (4) and (6) any person or persons had filed a complaint before it as to undue or unreasonable advantage, preference or prejudice between him or her or them and some other person or persons in intrastate commerce on the one hand, and interstate or foreign commerce upon the other hand, who had a right to complain as to any existing advantage, preference or prejudice, and there was no substantial or any evidence before the Interstate Commerce Commission [foi. 2370] to support in whole or in part either finding (4) or (6), and that each of said findings is void. further, because there was no substantial or any evidence before said Commission to support finding (6) in whole or in part, and said finding was void. And because without the valid findings of (4), (5) and (6), or some other finding or findings equivalent thereto that were valid, the Interstate Commerce Commission was without jurisdiction as to person or persons or matter in the controversy so as to enable it to issue the order as corrected or amended herein and of which order plaintiffs herein complain, and said order is void and unenforceable. And upon this motion plaintiffs pray the judgment of the Court.

"Eldon S. Dummit, Attorney General of Kentucky, State Capitol, Frankfort, Kentucky. M., B. Holifield, Assistant Attorney General of Kentucky, State Capitol, Frankfort, Kentucky, Attorneys for

Plaintiffs.

J. E. Marks, 145 E. High St. Lexington, Kentucky, Of Counsel,

[fol. 2371]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 708 Civil

COMMONWEALTH OF KENTUCKY AND RAILROAD COMMISSION OF KENTUCKY Plaintiffs

v

# UNITED STATES OF AMERICA Defendant

Motion to Dismiss Complaint of Fred M. Vinson, Director of the Office of Economic Stabilization—Filed July 17, 1944.

Come now, in due season, the railroad intervening defendants in the above-stated cause, and file this, their motion to dismiss the complaint of Fred M. Vinson, Director of the Office of Economic Stabilization, an intervening party plaintiff, upon the following grounds:

I

Said complaint of Director Vinson fails to state a claim upon which relief can be granted in this cause.

II

In the first paragraph of the prayer of the complaint of said Director Vinson, he asks "that the constitutional and judicial matters be trial de novo with respect to the allegations of paragraph 17 hereof."

No intervening party plaintiff may assert an interest or raise an issue greater or beyond the scope of the interest and issues raised in the original suit. In the proceedings in this cause before this Court the original plaintiffs are not entitled to a trial de novo; said original parties plaintiff are limited to the evidence and record which was before [fol. 2372] the Interstate Commerce Commission in the proceeding before it giving rise to the order attacked in the original suit in this Court. Said complaint of Director Vinson undertakes to inject new and additional evidence to that which was before the Interstate Commerce Commission in Dockets 28963 (Alabama), 29000 (Kentucky) and 29037 (Tennessee); and seeks a trial de novo in this Court.

Wherefore, the railroads, who are intervening defendants in this cause, move the dismissal of said Director Vinson's complaint, or so much thereof as unduly broadens the interest and issues raised in the original complaint,—that is to say, specifically, strike paragraph numbered 17 and the affidavit of Doris S. Whitnack and its accompanying tables referred to in said paragraph 17, and strike the first paragraph from the prayer of said Director Vinson's complaint numbered "First."

E. A. Smith, I. C. RR. Co., Chicago, Ill. H. L. Walker, C. & O. Ry. Co., Richmond, Va. W. L. Grubbs, L. & N. RR. Co., Louisville, Ky. Y. D. Lott, Jr., G. M. & O. RR., Mobile, Ala. F. W Gwathmey, 1110 Shoreham Bldg., Wash., D. C., Charles Clark, Southern Ry. Office Bldg., 15th & K Sts., N. W., Wash. 13, D. C. Attorneys for the Railroad Intervening Defendants.

[fols. 2373-2462] [Endorsed:] Copy received. Further service waived. 7/17/44. J. E. Marks, Attorneys for State of Kentucky, Kentucky Railroad Commission. M. D. Muller. Vinson, Director.

[fol. 2463] Before the Interstate Commerce Commission

Docket 29000

# Kentucky Intrastate Fares.

Hearing Room, Kentucky Railroad Commission, Funkfort, Kentucky. Wednesday, September 8, 1943.

Met, pursuant to notice, at 9:30 a. m.

Before C. E. Stiles, Examiner

# APPEARANCES:

Edward D. Mohr, % L. & N. Railroad, Louisville, Kentucky; James B. Gray, 135 E. 11th Place, Chicago, Illinois; and L. L. Oliver, % Southern Ry., Washington, D. C., appearing for Respondents.

Frank L. McCarthy; Mrs. John W. Langley, and Jack E. Fisher, Frankfort, Kentucky, appearing for Kentucky Railroad Commission.

Mr. M. B. Holifield, % Attorney General's Office, appearing for Commonwealth of Kentucky and Railroad Commission of Kentucky.

J. E. Marks, 145 E. High Street, Lexington, Kentucky,

appearing for Railroad Commission of Kentucky.

M. D. Miller, 4225 Federal Office Bldg. No. 1. Washington, D. C., appearing for Price Administrator and Director of Economic Stabilization.

[fols. 2464-2466] Henry M. Johnson, Louisville, Kentucky, Louisville Trust Building, appearing for himself, a rider, Cobjecting to increase of fares.

# [fol. 2467]

# Proceedings

Examiner Stiles: Let us come to order. The Interstate Commerce Commission has assigned for hearing at this time and place Docket No. 29000, Kentucky Intrastate fares.

Who desires to enter appearances in this proceeding?

Mr. Oliver: For the Respondents, Edward D. Mohr, % L. & N. Railroad, Louisville, Kentucky; James B. Gray, % Illinois Central Railroad, 135 East 11th Place, Chicago, Illinois, and L. L. Oliver, % Southern Railway Company, Washington, D. C.

Mr. McCarthy: Frank L. McCarthy, Jack E. Fisher, and Mrs. John W. Langley, for the Kentucky Railroad Commission; Honorable M. B. Holifield, Assistant Attorney General for the Commonwealth of Kentucky, and Mr. J. E. Marks, Lexington, Kentucky, for the Kentucky Railroad

Commission.

Mr. Miller: M. D. Miller, appearing for the Price Administrator and for the Director of Economic Stabilization,

in opposition to the proposals of the Respondents.

Examiner Stiles: This is an investigation by the Interstate Commerce Commission instituted upon a petition by the rail carriers operating in Kentucky to determine whether the refusal of the Railroad Commission of Kentucky to authorize or permit the application to the transportation of passengers travelling intrastate in Kentucky of coach fares and charges corresponding to those established for interstate application on October 1, 1942, causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign com-

merce, and to determine what fares and charges, if any, or what maximum or minimum, or maximum and minimum fares and charges shall be prescribed to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

Respondents may proceed with their evidence.

Mr. Oliver: I will call Mr. Aiken.

# E. N. AIKEN was sworn and testified as follows:

Direct examination.

# By Mr. Oliver:

Q. Please give your name and state your residence and official railroad connection.

A. E. N. Aiken, Atlanta, Georgia, Assistant Passenger

Traffic Manager, Southern Railway System Lines.

Q. State how long you have held your present position and, very briefly, your previous experience in passenger traffic matters.

A. I have been Assistant Passenger Traffic Manager since April 15, 1931. My service with the Passenger Traffic Department, Southern Railway System Lines, dates from [fol. 2469] August 1, 1902; prior to that date I was in the service of the Passenger Traffic Department of New York Central Lines for several years with headquarters at New York. My entire railroad career has been spent in the Passenger Traffic Departments of the railroads named.

Q. On whose behalf are you testifying in this proceeding!

A. Southern Railway Company was designated to act as Chairman of the Railroad Committee in presenting this case and I am speaking for all of the railroads operating within the State of Kentucky to which the Railroad Commission of Kentucky has denied authority to put their intrastate oneway and roundtrip passenger fares, good for transportation in coaches only, on the interstate basis in accordance with passenger tariffs filed with it to become effective December 1, 1942.

Q. Before proceeding with your testimony I think it would be well to place before the Examiner a map showing the railroad lines in Kentucky. You have, I believe, such a map which you wish to offer as an exhibit.

A. Yes.

Examiner Stiles: Let the map be identified as Exhibit No. 1.

(Exhibit 1, Witness Aiken, marked for identification.)

By Mr. Oliver:

Q. Will you identify the map, please, and state in what

year it was published?

A. I file as Exhibit No. 1, a map prepared in 1943 by [fol. 2470] Office of Chief Engineer, Southern Railway System Lines, showing this information.

Q. What Kentucky intrastate passenger fares are in-

volved in this proceeding?

A. Only the basic one-way passenger fares and the round-trip fares good for transportation in coaches only.

Q. Please give in chronological order a brief statement of the one-way interstate and intrastate basic passenger fares, good for transportation in coaches only, applicable in Southern Passenger Association territory from June 15, 1914, to date.

A. Generally speaking, the authorized bases of one-way passenger fares, good for transportation in coaches only, in Southern Passenger Association territory, i. e., territory south of the Potomac and Ohio and east of the Mississippi Rivers, including the gateways, for this period were as follows:

From June 15, 1914 to June 9, 1918, inclusive, 2.5 cents

per mile, in all classes of equipment.

From June 10, 1918, to August 25, 1920, inclusive under order of the Director General of Railroads, 3 cents per mile.

From August 26, 1920, to November 30, 1933, inclusive,

3.6 cents per mile.

I might divert here a little and point out parenthetically [fol. 2471] that during the years 1932 and 1933 certain of the southern carriers decided as an experimental proposition to establish lower fares in an attempt to attract additional travel to the railroads in competition with other forms of transportation, particularly with the private automobile and buses. For example, from April 16 1933, to November 30, 1933, inclusive, the Mobile and Ohio Railroad (now Gulf, Mobile and Ohio Railroad), Louisville and Nashville Railroad and Nashville, Chattanooga and St. Louis Railway had in effect experimental one-way passenger fares, good for transportation in coaches only, on basis of

2 cents per mile. During this same period the Southern Railway System Lines were experimenting between various points on their lines with a passenger fare, good for transportation in coaches only, of 1.5 cents per mile.

Continuing now with the chronological history. The fares for the remainder of period you have asked about were

as follows:

From December 1, 1933, to November 14, 1937, inclusive, 1.5 cents per mile, except that the coach fare on certain roads such as the Illinois Central System, Mobile and Ohio Railroad (now Gulf, Mobile and Ohio Railroad) and St. Louis-San Francisco Railway, was kept at 2 cents per mile, these latter roads meeting the 1.5 cents per mile competition between certain points. The 3.6 cents per mile was continued on the Chesapeake and Ohio Railway until May 31, [fol. 2472] 1936, and on June 1, 1936, the fare was changed to 2 cents per mile but the Chesapeake and Ohio Railway met the competitive fare of 1.5 cents per mile between Louis ville-Winchester and intermediate stations.

From November 15, 1937, to January 14, 1939, inclusive, 2 cents per mile in coaches. I might mention here that effective August 25, 1938, the fare on the Chesapeake and Ohio Railway was changed to 2.5 cents per mile, but from that date up to and including January 14, 1939, the Chesapeake and Ohio Railway met the 2 cents per mile coach fare between Louisville-Winchester and intermediate stations.

From January 15, 1939, to February 9, 1942, inclusive, 1.5 cents per mile in coaches, except on certain lines such as the Gulf, Mobile and Ohio Railroad, Illinois Central System, and St. Louis-San Francisco Railway which maintained a coach fare of 2 cents per mile, meeting the competition of other lines between certain points. The fare on the Chesapeake and Ohio Railway remained at 2.5 cents per mile until January 25, 1940, when it was changed to 2 cents per mile. During the period from January 15, 1939, to February 9, 1942, the Chesapeake and Ohio Railway maintained a coach fare of 1.5 cents per mile between Louisville-Winchester and intermediate stations to meet competition.

From February 10, 1942, to September 30, 1942, inclusive, 1.65 cents per mile in coaches, except on lines such as the [fol. 2473] Chesapeake and Ohio Railway, Gulf, Mobile and Ohio Railroad, Illinois Central System, and St. Louis-San Francisco Railway, which had a basic coach fare of 22 cents per mile but met competition between certain points.

Comparing the authorized basic fares in effect, good for transportation in coaches only, for the several periods mentioned with the coach fare being sought in these proceedings, i. e., 2.2 cents per mile, which is the same coach fare currently in effect for interstate traffic, it will be seen that:

For the period June 15, 1914, to June 9, 1918, the fares

were approximately 13½ per cent higher.

For the period June 10, 1918, to August 25, 1920, the

fares were approximately 36 per cent higher.

For the period/August 26, 1920, to November 30, 1933, the fares were approximately 63½ per cent higher.

Q. When and under what circumstances was the 2.2 cent coach fare made applicable for interstate transportation generally throughout the South?

A. On July 14, 1942, substantially all railroads operating in Southern Passenger Association territory (except those roads which were maintaining at the time a coach fare of 2.2 cents per mile) filed a petition with the Interstate Commerce Commission for the authority necessary to enable them to place their one-way coach fares on the basis as in [fol. 2474] effect generally throughout the United States. When this petition was filed the great majority of the southern roads had in effect a coach fare on the basis of 1.65 cents per mile. However, certain roads, for example, the Gulf, Mobile and Ohio Railroad, Illinois Central System and St. Louis-San Francisco Railway had in effect at that time coach fares on basis of 2.2 cents per mile, this being the same basis generally in effect throughout the rest of the United States.

The authority sought was granted by the Interstate Commerce Commission in its order dated August 1, 1942, modifying the original order in Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942, 248 I. C. C. 545, and the basis of coach fares authorized thereunder, i. e., 2.2 cents per mile for interstate traffic, was made effective on October 1, 1942.

Q. When the petition to which you refer was filed with the Interstate Commerce Commission, was there any protest filed with the Commission in connection with the proposed increase?

A. No. However, after the Interstate Commerce Commission had entered its order of August 1, 1942, approving the increase and after tariffs had been filed as authorized

by the Interstate Commerce Commission, Mr. Leon Henderson, then Price Administrator, filed a written protest and request for suspension. This protest was answered by the carriers and the Interstate Commerce Commission refused to suspend the tariffs and they became effective interstate, [fol. 2475] as previously stated, on October 1, 1942.

Q. What one-way coach fare is now being charged by the Kentucky Railroads for intrastate transportation in Kentucky?

A. The basis of one-way intrastate passenger fares, good for transportation in coaches only, generally maintained by the Kentucky railroads is 1.65 cents per mile. However, the Gulf, Mobile and Ohio Railroad and Illinois Central System now have in effect a coach fare of 2.2 cents per mile except in instances where they meet the competition of the lines maintaining 1.65 cents per mile fare, and on the Chesapeake and Ohio Railway east of Winchester and Covington the coach fare is also 2.2 cents per mile.

Q. Subsequent to the establishment of the interstate coach fare of 2.2 cents per mile to and from points in Kentucky, did the Kentucky lines undertake to establish the same basis of fares intrastate in Kentucky?

A. Yes.

Q. Explain what steps were taken and the results of the efforts of the Kentucky lines in this direction.

A. As previously shown, tariffs and supplements reflecting the establishment of 2.2 cents per mile were filed with the Railroad Commission of Kentucky to become effective December 1, 1942. These tariffs were suspended until June 28, 1943, by order of the Railroad Commission of Kentucky dated November 23, 1942, in Suspension Docket No. 29, which [fol. 2476] order provided that the matter be assigned for hearing before that body at a time and place to be later determined: On April 15, 1942, the Railroad Commission of Kentucky advised the hearing would be held in Frankfort, Kentucky, on May 12, 1943. This was later changed to May 14, 1943. The hearing was duly held on May 14, 1943, and decision of the Commission was rendered May 31, 1943, which denied the proposal of the carriers to make the one-way and round-trip coach fares, proposed effective intrastate in the State of Kentucky, but approved proposal as to the change in round-trip fares, good for transportation in parlor and sleeping cars.

Mr. Oliver: Mr. Examiner, I have an attested copy of the order of the Railroad Commission of Kentucky, which the witness has just referred to, which I would like to file as my Exhibit No. 2.

Examiner Stiles: Let it be so identified by the reporter.

(Exhibit 2, Witness Aiken, marked for identification.)

By Mr. Oliver:

Q. Have the railroads in the South, including the Kentucky lines, sought within recent months to put their intrastate passenger fares in other states on the interstate basis?

A. Yes.

Q. State what action has been taken by the various State Commissions in the proceedings involving the proposed in-

creases in passenger fares.

[fol. 2477] A. Petitions were filed with the Commissions in those states, the laws of which require that the authority of the State Commission be first obtained. In other states, in which no such requirement exists, tariffs designed to make effective the coach fare of 2.2 cents per mile were duly filed with the State Commissions.

The State Commissions of Florida, Louisiana, Mississippi, South Carolina and Virginia have approved the pro-

posed fares.

The Railroad Commission of Kentucky denied the increase in the basic one-way coach fares, but permitted the Kentucky lines to put into effect the round-trip fares good for transportation in sleeping or parlor cars. These latter fares became effective June 28, 1943.

The State Commission of Alabama denied the increases sought and a 13th Section proceeding was instituted, hearing on which was held in Montgomery, Alabama, June 28, 1943, and the matter is now before the Interstate Commerce Commission.

The State Commission of North Carolina made no definite decision as to proposal for change in the one-way passenger fares, good for transportation in coaches, but have addressed a petition to the Interstate Commerce Commission seeking an investigation by that body of the interstate coach fares to and from the State of North Carolina. Change in the proposed round-trip fares, good for transportation in parlor and sleeping cars, was approved by the Commission. [fol. 2478] As the action of the North Carolina Commission

was equivalent to a denial of the carriers' proposal, a 13th Section petition was filed by the carriers with the Interstate Commerce Commission and this matter is now pending before that body.

The State Commission of Tennessee has denied the increases sought, and the 13th Section proceeding will be in-

stituted in due course.

The decision of the regulatory body of the state of Georgia has not as yet been released.

Q. Do all of the Kentucky lines maintain a one-way coach fare of 2.2 cents per mile for interstate transportation to and from points in Kentucky?

A. Yes.

Q. Is this fare of 2.2 cents per mile now in effect for interstate transportation throughout the South and generally throughout the remainder of the United States?

A. Yes, with a possibility of a few exceptions on lines

operating west of the Mississippi River.

Q. Please explain how it happened that prior to October 1, 1942, some, but not all, of the Southern railroads had in effect coach fare of only 1.65 cents per mile, whereas the fare generally applicable in other parts of the country was

2.2 cents per mile.

A. In Docket 26550, Passenger Fares and Surcharges, decided February 28, 1936, and reported in 214 ICC 174, [fol. 2479] the Interstate Commerce Commission, after conducting an extended investigation, found that passenger fares of 2 cents per mile for transportation in coaches throughout the United States would be reasonable. In the same case the Commission referred to what is described as the "experimental coach fare" of 1.5 cents then being maintained by certain railroads in the Southeast, and, although approving the reasonableness of a coach fare of 2 cents per mile, held that the reduced coach fare of 1.5 cents was not "unlawful".

As previously indicated, effective November 15, 1937, the Southeastern roads increased their basic one way fare from 1.5 cents per mile to 2 cents per mile. Subsequently, certain of the Southeastern carriers, not including, however, the Illinois Central System, Gulf, Mobile and Ohio Railroad and the St. Louis-San Francisco Railway, and possibly some of the smaller roads, concluded it would be to their advantage to restore the former one-way coach fare of 1.5

cents per mile. This was done effective January 15, 1939. By its order of January 21, 1942, in Ex Parte No. 148, the Interstate Commerce Commission, upon petition of the railroads operating throughout the United States, approved a uniform increase of ten per cent in all passenger fares with certain provisions as to the disposition of fractions. Accordingly, passenger fares throughout the United States were increased ten per cent effective February 10, 1942. [fol. 2480] The general basis of coach fares, i. e., 1.5 cents per mile, applicable in the Southeast, with the exceptions heretofore mentioned, automatically became 1.65 cents per mile. On the other hand, the former fare of 2 cents per mile which was being maintained by the railroads in all other parts of the country, including some of the railroads in the Southeast, became 2.2 cents per mile. This ten per cent increase was also approved by the Kentucky Commission for intrastate travel on lines then maintaining a 2 cent per mile basis as well as lines maintaining a basic fare of 1.5 cents per mile.

- Q. Do the passenger trains operated in the state of Kentucky carry both interstate and intrastate passengers?
- Q. Do interstate and intrastate passengers frequently ride on the same trains and in the same coaches?
  - A. Yes.
- Q. Do you, as an experienced railroad passenger traffic officer, know of any reason which would justify the maintenance of a fare of only 1.65 cents per mile for intrastate coach transportation within the State of Kentucky, when an interstate passenger traveling to or from points in the State is required to pay 2.2 cents per mile?
  - A. No.
- Q. With the present differences between intrastate and interstate fares, is it possible for a passenger to defeat [fol. 2481] interstate fares to and from points in Kentucky by buying an intrastate ticket for a part of a trip?
  - A. Yes.
  - Q. Have you prepared an exhibit which illustrates this situation?
- A. Yes. As one illustration, the published interstate oneway coach fare from Somerset, Kentucky, to St. Louis, Missouri (on basis of 2.2 cents per mile) is \$9.28. It is possible to purchase a one-way coach ticket from Somerset,

Kentucky, to Louisville, Kentucky, at the intrastate rate of \$2.35, constructed on basis of 1.65 cents per mile, and rebuy, or pay cash fare on the train, from Louisville, Kentucky, to St. Louis, Missouri, at interstate fare of \$6.27 (2.2 cents per mile), or total expenditure of \$8.62, thereby defeating the through published interstate rate by 66 cents.

# By Examiner Stiles:

Q. Will you name the railroads involved in such a transaction?

A. The Southern Railway and the Louisville & Nashville Railroad.

Q. The junction being at Louisville?

A. Yes, sir, and the Southern Railway would be in the same depot at Louisville, and the L&N Railroad would be across town, transfer.

Q. And this difference you stated does not take into consideration the cost of that transfer?

[fol. 2482] Al Not as between our line and the L&N Railroad, but there is no transfer at the Southern Railway; it is in the same depot.

Q. Perhaps I didn't understand you. I thought you made this illustration where it was Southern to Louisville and

L&N beyond.

A. It could be both. A man could walk across the street or he could use our own train from Louisville; the Southern Railway also runs from Louisville to St. Louis as does the L&N Railroad, but they operate from different depots at Louisville.

Q. Somerset, Kentucky, is on the Southern Railway?

A. Yes sir, it is on the CNO&TP, of the Southern Railway System.

Examiner Stiles: Proceed.

Mr. Oliver: I wish to call this as my Exhibit No. 3.

Examiner Stiles: It may be identified as Exhibit No. 3.

(Exhibit 3, Witness Aiken, marked for identification.)

## By Mr. Oliver:

Q. Please proceed.

A. I file Exhibit No. 3 giving a number of illustrations or examples of possible reductions in charges for interstate trips on tickets good for transportation in coaches only by

purchasing to the point nearest the State line at which trains are regularly scheduled to stop and rebuying therefrom to interstate destinations. These examples, or illustrations, can be multiplied indefinitely.

[fol. 2483] Examiner Stiles: Are these all instances which occur on the Southern Railway lines? It is headed "Southern Railway System".

The Witness: That is right.

Examiner Stiles: You don't show the railroad, and I wondered if these were entirely all Southern Railway System hauls.

The Witness: Yes sir, that is correct.

#### By Mr. Oliver:

Q. Now, let's be certain of that, Mr. Aiken. Have you any other railroad lines involved in there,—the L&N or from L&N points?

A. No sir, these are all Southern Railway System line points in this case. I do have, however, a statement that the L&N Railroad has furnished me if you would like to put it in evidence.

Q. You might give one or two illustrations from points on the L&N Railroad if you have them before you.

A. As an illustration, from Lexington, Kentucky, to Memphis, Tennessee, the interstate coach fare is \$10.27; from Lexington to Guthrie, Kentucky, intrastate, the fare is \$4.25 and from Guthrie, Kentucky, to Memphis, Tennessee, the fare is \$4.77, a total of \$9.02, or a difference of \$1.25.

Mr. McCarthy: From Lexington to what points?

The Witness: Memphis.

Mr. McCarthy. But to what intrastate point? [fol. 2484] The Witness: To Guthrie, Kentucky.

#### By Mr. Oliver;

Q. Do passengers actually defeat the interstate fares in the manner you have indicated?

A. It is common knowledge that advantage has been taken of the disparity in fares by interstate passengers buying tickets at the lower intrastate fare to a given point and rebuying from such point, or paying cash fare on trains, to destinations. The condition which permits of this exists but it is difficult and almost impossible to prove or to police.

Mr. Miller: I object to that testimony as hearsay unless it is qualified.

Mr. Oliver: Mr. Aiken is Assistant Passenger Traffic Manager of the Southern Railway System Lines, and, in the course of his duties, he gets reports from his agents and probably from conductors; at any rate, he supervises the passenger traffic business.

Examiner Stiles: If those are facts, you might bring out those facts by the witness and thus verify his qualifications for that testimony.

# By Mr. Oliver:

Q. To shorten it, I will ask you in what connection has the statement that it is common knowledge that advantages taken of the disparity in fares by interstate passengers buying tickets at the lower intrastate fare to a given point and rebuying from such point or paying cash fares on trains?

[fol. 2485] A. Our agents and some of our passenger representatives have, at times, called me on our local phones, or my office phones, and made inquiry if they could issue a ticket at a certain given fare to a given point where the fare was the interstate fare and sell another ticket at the intrastate fare from the given point to the destination, which would effect a saving in the through fare from point of origin to destination interstate, and in each and every instance, they have been informed they could not do that.

Examiner Stiles: That goes to show that inquiry has been made by passengers whether they could do this. Your testimony was it is being done, and the objection was made that that was hearsay, and you are given an opportunity to say on what your testimony is based.

The Witness: Unfortunately, the gentleman didn't permit me to proceed, or I would have told you the conditions that exist, but it is difficult to prove, almost impossible to prove or to police the situation, as the individual has the right to buy from Somerset to Louisville, getting off at Louisville and rebuying, and I don't know that there is anything that you can do about it. He is not going to tell the conductor that he is going to do it, but he may buy his ticket from Lexington to Ludlow, and ride on across the river into Cincinnati before the conductor can get to him.

[fol. 2486] Mr. Holifield: You don't know that to be a fact, do you?

The Witness: I have not encountered it individually, and I wouldn't want to say so for that reason, and that is the reason that I am making this statement here.

Examiner Stiles: Your belief that it is done is based upon

the facts that you have already testified to?

The Witness: Yes sir.

Examiner Stiles: With that explanation, the objection is overruled.

· Mr. Holifield: What is your ruling?

Examiner Stiles: The objection is overruled in view of the explanation given by the witness.

Mr. Holifield: Exception on behalf of the Commonwealth

of Kentucky.

Mr. Miller: Note an exception, please. Examiner Stiles: Proceed, Mr. Oliver.

#### By Mr. Oliver:

Q. Have you prepared an exhibit illustrating that the present lower intrastate coach fares in Kentucky result in undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate and interstate commerce? Please offer your exhibit and explain it.

A. I have prepared such an exhibit.

Mr. Marks: I object to that testimony on the ground that it is a question calling for a conclusion of law whether there [fol. 2487] is any undue prejudice or preference.

Mr. Miller: I will object to the exhibit mentioned and to the question for the reason that it is not qualified as showing that any such instances have actually occurred in which there has been any attempts to defeat the interstate fare.

Mr. Oliver: Now, Mr. Examiner, I think with all due respect to Mr. Miller, I don't think that he has examined the exhibit mentioned. The exhibit does not show on its face that it is designed to illustrate any defeat of interstate fares. It shows or purports to show the difference in favor of intrastate passengers traveling within the state of Kentucky as compared with interstate passengers travelling from the same points in Kentucky to some point outside of the state for substantially similar distances.

Mr. Miller: I will not object to it if you will strike from your question "undue" and "unreasonable."

Examiner Stiles: What it results in is something that

the Commission will determine.

Mr. Oliver: I grant you that.

Examiner Stiles: And I understand that although you have framed your question in this manner, what you really intended was—this next exhibit is what you submit to support your contention of undue and unreasonable preference and advantage and so forth.

Mr. Oliver: I will grant you that the question may be [fol. 2488] awkwardly phrased and that it might possibly call for a conclusion of law, and suppose that I reframe the

question then?

Examiner Stiles: Yes.

Mr. Oliver: I will reframe the question.

By Mr. Oliver:

Q. You have prepared an exhibit, I believe, showing the difference in fare paid by passengers travelling within the State of Kentucky in comparison with the fares paid by interstate passengers travelling from a point within Kentucky to a point outside of the State for substantially similar distances, have you not?

A. Yes. And I filed as my Exhibit No. 4, I take it that it

will be numbered 4, showing this information.

Examiner Stiles: Let it be identified as Exhibit No. 4.

(Exhibit 4, Witness Aiken, marked for identification.)

By Mr. Oliver:

Q. Will you please proceed with your explanation of that exhibit?

A. As an example of this, the interstate fare on basis of 2.2 cents per mile from Lexington, Kentucky, to Columbus, Ohio, a distance of 197 miles, is \$4.44; whereas, the intrastate fare on basis of 1.65 cents per mile from Lexington, Kentucky, to Owensboro, Kentucky, a distance of 199 miles, or two miles greater, is but \$3.35, a difference of \$1.09. The examples shown in the exhibit are only illustrative and could be multiplied indefinitely.

[fol. 2489] Q. Did the Interstate Commerce Commission have before it in the original and reopened proceeding in

Ex Parte 148 a full and complete record of the facts concerning revenues, expenses, operating conditions, financial conditions, etc., of the Southern railroads, including the Kentucky lines, as well as of railroads operating in other parts of the country?

A. Yes. It is my understanding copy of the record is on

file with this commission.

Q. In the report and order of the Interstate Commerce Commission on the further hearing in Ex Parte 148, dated April 6, 1943, did the Commission modify in any way its previous findings in connection with interstate standard passenger fares?

A. No.

Q. Are the railroads, including the Kentucky lines, now encountering any particular difficulties or incurring any unusual expenses in connection with the handling of passenger traffic?

A. Yes, they are. The handling of military movements necessarily entails substantial added costs. Equipment must be assembled at point of origin and this, in many instances, necessitates dead-heading equipment long distances. In addition, after the movement has been completed the equipment must in many cases be returned from destination point,

To comply with the Government requirements, a "train escort" is assigned to ride troop trains. This is an added

[fol. 2490] item of expense.

That proper protection may be accorded, in accordance with the requirements of the Government for military movements, it has been necessary to increase the personnel in general offices in or ler that such offices may be on duty, in some instances, for 24 hours each day and others from 12 to 16 hours per day, which is another item of expense.

Examiner Stiles: The train escorts that you refer to is not entirely clear to me. Do you mean that the railroad sends an employee of its own as an escort?

The Witness: Yes sir, at the request of the Government.

Examiner Stiles: Proceed.

The Witness: Because of the volume of military, as well as civilian travel, the railroads have been compelled not only to increase their general office forces but also to increase the forces in ticket agencies and elsewhere, all items of added expense.

Large sums of money have been spent in the last decade in remodeling and air-conditioning passenger equipment in an effort to recapture a portion of the traffic using other modes of transportation, particularly from the highways. While the monies expended from these improvements have provided additional comforts and conveniences to the traveling public at, so far as coach travel is concerned, the lowest charges ever made by the railroads, it has materially [fol. 2491] increased the cost of service.

The Southern Railway System Lines, alone, have air-conditioned, or purchased new with air-conditioning facilities, 189 coaches. Many coaches have been remodeled to provide additional space for retiring and smoking rooms for both ladies and men, with soap, towels and drinking cups furnished without charge. In making these improvements, the seating capacity of the coaches was reduced roughly from 15 to 20 per cent, or from 80 and 88 persons to 70 persons; 14 Southern Railway System coaches have been equipped with reclining chairs and in these coaches the seating capacity was reduced almost 50 per cent or from 80 persons to 46 persons. This greatly decreased carrying capacity, correspondingly, lowering the revenue per coach.

### By Mr. Oliver:

Q. Please state for the record the number of troop trains operated on Southern Railway System lines during the months of June and July, 1943, and the number of cars handling troops operated in your regular trains during these months.

A. On Southern Railway System Lines, during the month of June, 1943, there were operated three hundred and forty-five (345) troop trains. Three hundred and seventeen (317) regular trains were operated in two sections and 1458 extra cars handling troops were operated in regular trains. During July there were operated on Southern Railway System Lines three hundred and thirty-seven (337) troop trains. Three hundred and fourteen (314) regular trains were operated in two sections and 1438 extra cars handling troops were operated in regular trains.

Q. Does the Government pay full tariff fares for troop movements?

A. No. Between points between which no land grant is involved, an allowance of 5 per cent is made the Government from commercial fares of all classes.

Between points between which the fares apply via route where land grant deduction is applicable, either in whole or in part, land grant deduction of 50 per cent is made from the commercial fare for that part of the route which is land grant and from the amount thus obtained an additional allowance of 3 per cent is made.

Q. At the time the one-way coach fare for interstate transportation was increased to 2.2 cents per mile, was any exception made as to members of the armed forces in uniform

or furlough?

A. Yes. Upon request of the United States Government, reduced round-trip coach fares on the basis of 1½ cents per mile were authorized for the personnel of the United States Army, Navy, Marine Corps, Coast Guard, Women's Naval Reserves, Women's Army Auxiliary Corps, Women's Coast Guard Reserves and Women's Marine Corps, travel-[fol. 2493] ling in uniform and at their own expense when on official leave, furlough or pass. This same fare is also accorded nurses, when not travelling in uniform, upon presentation of proper identification and, likewise, is accorded under similar conditions to the personnel of military-forces of the several allied nations,

Q. There has been no proposal to increase this furlough fare for intrastate traffic travel in Kentucky, has there?

A. No proposal has been made to increase the round-trip coach fares for this character of traffic either interstate or intrastate.

Q. So far you have dealt primarily with the matter of one-way coach fares. The railroads are here seeking not only to put their intrastate one-way coach fares on the interstate basis but are also seeking to make certain changes in round-trip fares in coaches. Please explain the present set-up of round-trip coach fares for interstate travel and state what relief the railroads are here seeking with respect to their intrastate round-trip fares in coaches.

A. Prior to October 1, 1942, in the Southeastern and other territories, there was in effect round-trip coach fares constructed on various basic fares per mile and with varied

return limits.

With the approval of the Interstate Commerce Commission, effective October 1, 1942, the lines generally in all [fol. 2494] territories in the United States adopted one character of round-trip coach fare to bear a uniform return limit of three months from date of sale and this character

of round-trip coach fare is now in effect for interstate travel and likewise for intrastate travel in the southern states of Florida, Louisiana, Mississippi, South Carolina and Virginia as well as in other sections of the country.

The round-trip coach fares good for interstate transportation and also for intrastate transportation in the states named are constructed on the basis of 180 per cent of the one-way coach fare of 2.2 cents per mile, or 1.98 cents per mile for the distance travelled. The Kentucky carriers are seeking to establish exactly the same basis of round-trip fares for intrastate transportation in Kentucky as is now in effect for interstate traffic to and from points in Kentucky as well as in several states and other sections of the country heretofore mentioned. To accomplish this it is proposed that the current fifteen day limit round-trip coach fare on basis of 1.485 cents per mile and the sixty day round-trip coach fare on basis of 1.65 cents per mile be cancelled and that there be substituted in lieu thereof round-trip three months limit fare on the basis of 1.98 cents per mile:

Q. Have you anything further to add to your testimony,

Mr. Aiken?

[fol. 2495] A. No, I think not.

## By Examiner Stiles:

Q. Mr. Aiken, on page 12 of your statement, you refer to the remodeling of many coaches to provide additional space for retiring and smoking rooms for both ladies and men. I was under the impression since the women have taken to smoking so extensively that you allowed smoking in all the coaches, isn't that the rule?

A. No, that is not the rule, Mr. Examiner, but that rule is not generally observed; the ladies do smoke when and where they see fit. They even smoke in the Pullman cars

Q. It is not the rule, but the practice.

A. It was designed to be a place for them to smoke.

Q. I wonder how extensive this remodeling is in order to have these extensive smoking rooms. Has that been done to quite an extent? Isn't it very minor?

A. It is on the fourteen cars that I mentioned to you. Those are the ones. I don't know the exact number of cars that it was done on, but it was quite a number of them and they were thrown into our through trains for that pur-

pose. It might have been a good thing if we had not done it now as we would have had more seating space now.

Q. Do you have any idea as to the actual number?

A. No, sir.

Q. On page 13 of your written statement, you spoke about land grant deductions. Are there any land grant lines in [fol. 2496] the state of Kentucky?

A. Not a mile, not a single mile in the state of Kentucky.

Q. Then, that doesn't affect the fares in Kentucky?

A. Not in intrastate. I simply put it in here to show the general situation as to the fares to be paid by the Government.

Examiner Stiles: Do you tender your exhibits now?

Mr. Oliver: Yes, sir, Mr. Examiner, I would like to offer Exhibits 1 to 4, which have been identified by this witness.

Examiner Stiles: Exhibits 1 to 4, inclusive, are received in evidence.

(Exhibits 1 to 4, inc., Witness Aiken, received in evidence.)

Examiner Stiles: You may cross examine the witness.

Cross-examination.

## By Mr. Marks:

Q. With respect to the question of smoking, is any effort made to prevent people from smoking in any part of your

trains as a practical matter?

A. Yes, there are at times; certain conductors do; certain ladies object to it. The rules is that they are not supposed to smoke in the body of the car, but, as a matter of fact, as I say, it is possibly done almost as a current practice.

Q. Have you ever given any consideration to establishing a small part of your car where smoking would not be

permitted?

A. Well, it always has been the rule that it would not be permitted except in the smoking compartments, so the largest part of the car was supposed not to be a smoking com[fol. 2497] partment.

Q. I merely mention that because it is a personal matter with me,—my mother has had to quit riding on trains because she can't find a place where smoking is not permitted.

A. If you were to approach a conductor and tell him that, he would stop it, or attempt it.

Q. Well, she has never been able to do it anywhere in the

train.

A. He is supposed to try to stop it.

Q. Briefly, why are you asking these increases in Kentucky?

A. To put our fares on an equality with the interstate fares such as we have in other states that we have asked.

Q. Would you say that uniformity is your chief reason!

A. It would not be the chief reason, no; it would be a very fine reason if we could get it done.

Q. What is the chief reason?

A. There is revenue involved and it should be on the same basis as the interstate, because this fare is a subnormal fare; it is not a normal fare under any circumstances.

Q. Would you go so far as to say that your chief reason for it is the need of additional revenue at the present time!

A. No, I don't think I would say that we are in need of

additional revenue at this time.

Q. Now, on page 9 of your written testimony, in the next to the last question, you speak of the necessity of raising the [fol. 2498] Kentucky fares in order to bring about uniformity with the interstate fares. Couldn't the same result be reached by reducing your interstate fares to the level of the Kentucky intrastate fares?

A. Yes, sir, of course, but at a terrible sacrifice of reve-

nue.

Q. Would it be any more sacrifice than you were making when you were operating on the lower fares in interstate!

A. Yes, sir, materially so.

Q. Why?

A. Because of the present-day conditions. When we made the reduced subnormal fare of 1.5, we were endeavoring to attract traffic from other modes of transportation, such as the highways and busses—the privately owned car was the largest factor, by the way, but that does not exist to-day.

Q. Are you in favor of the principle that the more traffic

you get, the higher your fares should be?

A. No. I don't think it could be considered in the light of the subnormal fare we are discussing here. Our fare is nothing but a very unusual-low fare; it is the lowest in the United States.

Q. Wasn't that the same situation existing in the South at the time that you had your hearing in 1936?

A. Yes, sir, that is correct.

Q. Now, referring to your testimony in regard to defeat-[fol. 2499] ing interstate fares by purchasing an intrastate ticket—taking up first the illustration from Somerset, Kentucky, to St. Louis, Missouri,—what would actually occur when the passenger from Somerset to St. Louis arrives at Louisville in order to get this alleged reduction?

A. All he would have to do would be to get off the train or walk into the station and buy a new ticket from Louisville to St. Louis, or he could remain on the train and buy a cash fare ticket because on the Southern Railway we have

no penalty for any of our cash fares,

Examiner Stiles: That is for cash fares you have no penalty?

The Witness: Yes, sir, that is correct.

## By Mr. Marks:

Q. If he stayed on the train, wouldn't the conductor know that he started from Somerset?

A. No, sir, because it is a new conductor at Louisville, and I wouldn't know how he would know it.

Q. Wouldn't he know that that passenger had already been riding on the train before he got to Louisville?

A. I don't know how he would know it, particularly in this day and time when the cars are pretty well filled as you know from observation.

Q. How would you know then that this is being done?

A. I have tried to explain that inquiries have been made to me whether it could be done—if it would be perfectly all [fol. 2500] right for them to do it, and in every case we have told them "no", and there is no way as I have said to actually prove it or police the situation unless we were to perhaps put a set of operatives on it which would hardly be the right thing to do.

Q. Do you mean to say that your conductors and agents are reporting that it is being done, and that they have re-

ported that to you?

A. No, our passenger and ticket agents have asked us if that could be done, and I refer more particularly to the time when the Florida intrastate rates were on a lower basis, and inquiries came to us about selling a ticket to Jacksonville and then another ticket a different rate to their destination, so that the man could have his baggage checked through; but I said that nothing can be done even if the man does that, if he buys his ticket to Jacksonville and gets off and buys another and checks his baggage on from there; if he gets off and purchases a ticket there and presents it to us, we will have to check his baggage on for him.

Q. Let's not get down into Florida, but let's get back closer to home, because we know Louisville a good deal better than we do Jacksonville around here. Do you know

of a single incident where it has been done?

A. Of my own knowledge, no, sir, I do not; although this is in the nature of hearsay evidence, I can cite you these [fol. 2501] matters—one of our men coming from Winchester to Louisville yesterday, the conductor told him that it was being done,—that it was done almost every day—

Mr. Miller: I object to that as hearsay.

# By Mr. Marks:

Q. To where?

A. From points in Kentucky and that it was being done into Cincinnati, at Covington, we will say.

Q. All right, what did that man say had happened at

Covington, since you have mentioned Covington?

A. I don't know anything about it definitely, and it is only hearsay so far as I am concerned, and I only mentioned it because it shows the possibility—it is there and it can be done, and whenever there is a big distributing center, such as Louisville in the State, it is very simple for a man to buy a ticket from a point out of Louisville and come to Louisville, and then buy another ticket from Louisville to Cincinnati and save money in that way.

Q. Might he travel in the same car or on the same train!

A. No, sir, he might not travel in the same car, and then again he may, or the same train.

Q. If he does travel on the same train, do you mean to say that he can just stay there in the car on that train with his baggage and then pay a cash fare from Louisville to Cincinnati?

A. The chances are that he does not have any checkable [fol. 2502] baggage when he pays a cash fare.

Q. Even though the conductor would know that he was on the train before he got to Louisville?

A. I doubt that he would know it, he being a new conductor out of Louisville, I hardly see how he could know that he came into Louisville on that train.

Q: How about the porter?

A. We are talking about the coaches and not the sleeping cars.

Q. You have no porters there?

A. No, sir, they only go through with the train-erews to where their runs may end.

Q. Do you change your train crew altogether at Louis-ville?

A. Yes, sir.

Q. Going to where?

A. Going to St. Louis, the Louisville and Danville crew, and then the Princeton crew, there would be no difficulty in anybody getting off the train and buying a ticket; when he buys a ticket and presents it, the conductor must accept it.

Q. Does the conductor make any effort to see that his passengers who are scheduled to go to Louisville get off

at Louisville?

A. No instructions have ever been issued by us to conductors to check on it.

Q. If the conductor does not keep up with his passengers, what is to keep a passenger from Somerset buying a ticket [fol. 2503] to Danville and riding on to Louisville free?

A. He knows that he is going to Louisville, and the connecting or the new conductor gets on at Louisville.

Q. Is it a fact that this practice is illegal if it is being indulged in?

A. I don't believe I could answer that question for you— Examiner Stiles: That is a question that should not be directed to this witness.

## By Mr. Marks:

Q. Have you issued any instructions to your men to try to stop this practice if it is being indulged in?

A. No, sir, not a line. We have issued nothing in writing.

. Q. Is it a part of their duties, is it a part of the duty of the conductors to collect legal fares?

A. They do, they do collect them.

Q. Would it be legal, or do you know whether it would be legal or not?

A. I wouldn't like to attempt to answer that question for you.

Examiner Stiles: That is a legal question that should not be put to this witness. Off the record.

(Discussion outside the record.)

Examiner Stiles: On the record.

#### By Mr. Marks:

Q. On page 11, you spoke of certain added costs that are being incurred by your railroad in the passenger business today. Wouldn't those added costs, if any, be reflected in your operating expenses?

[fol. 2504] A. We are going to have another witness who can give you the statistical data that I am not in possession of that might be able to answer that question better than I could for you.

Mr. Marks: If he doesn't know anything about these costs on cross-examination, then I think that his testimony on direct examination should be stricken, and I so move.

Examiner Stiles: If the Respondents do not submit evidence before they are through to sustain these statements, then I will entertain your motion at that time.

## By Mr. Marks:

Q. Is it your contention that you are making less money on your troop train movement than on your regular train movements?

Al No, sir.

Q. Were these voluntary improvements that you have made that you speak of, or were they required by some Federal authority?

A. These were voluntary originally, sir.

Q. Now, with respect to such things as observation cars, ordinarily; aren't these available to your passengers on your Pullman cars rather than your coach passengers?

A. They are not available to coach passengers; they are

only available to Pullman passengers.

Q. May I ask you why you make that allowance of 5

per cent on troop movements?

A. Yes, sir, the carriers in all the United States, all of the carriers in the United States have an understanding [fol. 2505] with the United States Government, and this arrangement has been built up over many, many years, and the carriers do the routing of the traffic so as not to congest any one line or anything like that. It keeps away from the bidding and that sort of thing.

Mr. Marks: That is all.

# By Mr. McCarthy:

Q. Mr. Aiken, these trains that have been air conditioned, these coaches that have been better equipped, are all interstate trains, are they not!

A. Well, they run intrastate, too, as well as interstate; our big trains all handle some intrastate traffic in them.

Q. Do you have any trains on the Southern that are in-

- A. In Kentucky?
- Q. Yes.
- A. Yes, we do, and I think they are NCA cars.
- Q. What do you mean by that, by NCA?
- A. Not air conditioned.

Mr. Miller: When you speak of intrastate trains, do you mean a train that starts and stops within the state of Kentucky?

Mr. McCarthy: Yes, sir.

The Witness: That is what I understood his question to be.

## By Mr. McCarthy:

- Q. And all of these improvements are not on the wholly [fol. 2506] intrastate trains?
  - A. Not wholly on the intrastate?
  - Q. Yes.
    - A. No, sir.
- Q. Any intrastate trains does not have these extra improvements?
  - A. No, sir.
- Q. Is that true on the other railroads in Kentucky, or do you know about them?
- A. I wouldn't like to express an opinion on that because I don't know.
- Q. And any improvements that you referred to on page 12 refer only to the Southern Railway?
  - A. Yes, sir, I mention our line particularly:

#### By Mr. Miller:

Q. On page 13 of your prepared testimony, you mentioned this furlough fare of 1½ cents; do you know whether or not that fare is compensatory?

A. I would say it was not, but I can't tell you definitely.

Q. You don't know!

A. No; it is too low; it is a very subnormal fare.

Mr. Oliver: You might have to define the term "compensatory".

The Witness: Yes, sir, very much.

Mr. Miller: If he doesn't know, that is all I want to know.

## By Mr. Miller:

Q. Now, on page 12 of your prepared testimony, you [fol. 2507] mention the fact that the seating capacity of your coaches has been reduced roughly to about 70 persons. Does that apply to all coaches that you operate in Kentucky?

A. I don't understand your question.

Q. On page 12 of your prepared testimony, does the testimony regarding the reduction of your coach capacity to 70 persons apply to all persons operated in Kentucky?

A. I don't know that, sir, definitely. I imagine, however, that a witness we will have following can give you that information definitely.

Q. Now, in troop trains, are all seats in a coach generally occupied?

A. In troop trains?

Q. Yes.

A. They are loaded, generally speaking, on about 50 to a coach, but we are allowed to load them on a basis of 75 per cent capacity of the car—that is to take care of the equipment and certain other things that the men carry with them, if they are moving in coaches exclusively. If they are moving in sleeping cars, that is a different story.

Q. Now, referring to page 11 of your prepared testimony, you mentioned the proceeding in Ex Parte 148. Is it not true that the original proceeding had before it on the issue of the 10 percent increase, and that the proceeding on further hearing had only the issue of the suspension

[fol. 2508] of that 10 per cent increase?

A. Do you mean in Ex Parte 148?

O. Right.

A. I don't know how the Commission separated it. We asked for an increase under the 26550 and they denied it and put it back under the Ex Parte 148, so I just don't know how they did separate it, to tell you the truth. Maybe Mr. Oliver can tell you.

Mr. Oliver: I think he refers to the original proceeding in Ex Parte 148 where the carriers asked for 10 per cent increase. Then, in the reopened proceeding, as I recall it, the request of the OPA was for cancellation of the increase that had been granted previously. That was the question, as I understand it.

Mr. Miller: Yes.

Mr. Oliver: And I would say that that is correct. You are referring to the fact now where the carriers in the South asked to increase our fares interstate from 1.65 to 2.20?

The Witness: That is what I thought he referred to.

Mr. Oliver: The Commission entered an order in Ex Parte 148 to modify the original order to the extent necessary for us to do that.

The Witness: That is what I thought he was refer-

ring to.

Mr. Miller: That is satisfactory to me.

By Mr. Miller:

Q. On page 11 of your prepared testimony, you also [fol. 2509] described increased costs. Is it not true that revenues have increased by even greater percentages, than your increased costs?

A. Our revenues have increased and costs have increased, but their relative percentages, I would not have—I would like for our statistical witness to answer you on that, because I don't know it; it is not my business to work up the statistics.

Mr. Oliver: We will have full and complete information on that score.

## By Mr. Miller:

Q. Now, I refer to pages 9 and 3 of your prepared testimony. On page 3, you describe the rate of 1.5 cents per

mile generally maintained by Southern carriers from 1933 to the latter part of 1937, and increased to 2 cents per mile from November, '37 to Jamary 14, '39, and then the reduction to the rate of 1.5 effective January 15, 1939. On page 9, you say that these lines made this deduction on January 15, 1939, because it would be to their advantage to restore the former one-way coach fare of 1.5 cents per mile. Why did they reach that conclusion?

A. They reached the conclusion because the 2 cents increase did not produce the results they anticipated that it

would produce.

Q. You mean by that that the total revenue produced by the 1½ cent fare was more than the total revenue being produced by the 2 cent fare?

[fol. 2510] A. Generally speaking, I would say that that

is correct.

Q. Now, referring to page 7 of your prepared testimony, is it not true that in support of that petition addressed to the Interstate Commerce Commission by the Public Utility Commission of North Carolina, the Alabama Public Service Commission, and the Office of Price Administration have also petitioned for an investigation?

A. I haven't seen a copy of the Office of Price Administration petition, but I have a copy of the Alabama peti-

tion.

Q. It is a petition to seek a hearing as to the reasonable ness of intrastate fares?

A. But I understand the QPA also did the same thing.

Q. Now referring to page 5 of your prepared testimony, do you know whether the Southern railroads notified the Price Administrator, and consented to the timely intervention by the Price Administrator prior to 30 days before that increase in interstate rates which occurred on October 1, 1942?

Mr. Oliver: I would like to answer that question.

Mr. Miller: That is all right, if you wish to.

Mr. Oliver: At the time that the increase was made, the amendment to the Emergency Price Control Act had not gone into effect. The increase in fares became effective October 1, 1942, and the amendment to the Price Control Act which required consent to timely intervention became effective on October 2, 1942, so, of course, there was no [fol. 2511] notice given to the Office of Price Administration.

Mr. Miller: With that explanation, Mr. Examiner, I move this proceeding be discontinued on the theory that the present interstate rates are not effective because there has been no compliance with Section 1 of the Stabilization Act just mentioned by Mr. Oliver, which is retroactive to September 15, 1942, and for authority of that conclusion, that it is retroactive, I offer the case Henderson vs. Washington, Marlborough & Annapolis Motor Lines, 132 Fed. 2nd. 729. Incidentally, I have a mimeographed copy of that decision with me if any person cares to look at it.

Mr. Oliver: I have read it and expect that the Examiner has also.

Examiner Stiles: The Examiner, of course, will not grant that motion at the hearing. If you want to press that motion, Mr. Miller, you must do so in your brief.

Mr. Miller: All right, sir.

Examiner Stiles: Any further cross-examination?

Mr. Miller: No, sir, I have none.

Mr. Marks: Just one further question.

## By Mr. Marks:

Q. Mr. Aiken, to what extent are the fares of the Chesapeake & Ohio Railway involved in this proceeding?

A. My understanding is their fares are from Winchester over to Louisville and the intermediates. They have a subnormal fare in effect with an expiration date in their [fol. 2512] tariff for their Big Sandy Division, and I take it that that fare, if and when cancelled, would automa cally put into effect the same fare that they have on their other lines, the line between Ashland, Catlettsburg and Covington or Ashland, Catlettsburg and Winchester, 2.2 cents per mile.

Q. Before they could increase that fare, wouldn't they have to make application to the OPA before they could increase it?

A. They probably would have to-

Mr. Oliver: I think we are getting into a legal question again.

The Witness: I think they would have to tell them something about it, I don't know how they would do it.

Mr. Marks: I will withdraw that.

#### By Mr. Marks:

Q. Do you know how long that fare has been in effect?

A. No, sir, but it has been for sometime; they have carried it on from time to time by reissuing that tariff and putting a new expiration date on it,

Q. Do you know what that expiration date is?

A. No, sir, it is purely a local situation on the Chesapeake & Ohio Railroad that I would not come in contact with in my business dealings, but I do know that because it was given to me by the C&O man.

Q. There is no question before this Commission today

about raising those particular fares?

[fol. 2513] A. I don't so understand, on the Big Sandy Division.

Mr. Marks: That is all.

Examiner Stiles: Any redirect?

Mr. Oliver: I have no questions.

Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: We will take a short recess.

(Whereupon, a short recess was taken.)

Examiner Stiles: Call your next witness.

Mr. Gray: I will call Mr. Tucker.

## F. H. Tucker, Jr. was sworn and testified as follows:

Direct examination.

## By Mr. Gray:

Q. Please state your name, address and occupation for the record, please, sir?

A. My name is F. H. Tucker, Jr.; My address is Louis-

ville, Kentucky. .

Q. And what is your present position, Mr. Tucker?

A. I am District Passenger Agent for the Illinois Central Railroad in Kentucky.

Q. What has been your experience in passenegr traffic work?

A. I have been handling passenger traffic work since 1922, approximately 21 years.

Q. How long have you held your present position?

A. In the present position in Louisville since September [fel. 2514] 1, 1937.

Q. Will you locate generally the passenger lines of the Illinois Central Railroad within the State of Kentucky?

A. The passenger lines of the Illinois Central Railroad in Kentucky may be roughly described as four divisions or services of the railroad,—from Louisville to Fulton, Kentucky; from Princeton, Kentucky, to Henderson, Kentucky; from Princeton, Kentucky, to Hopkinsville, Kentucky, and from Fulton to Wickliffe, Kentucky.

Q: What is the train service of the Illinois Central Rail-

road on those lines?

A. On the first mentioned, which is from Louisville to Fulton, we have what is described as double daily train

service, which means two trains each way a day. .

On the line from Princeton to Henderson, we have mixed train service; similar service on the line from Princeton to Hopkinsville; and on the line from Fulton to Wickliffe, which is our main line, there are five trains each day, but insofar as service to the state of Kentucky is concerned, there is one northbound train and two southbound trains, because the other trains do not stop at Wickliffe.

Q. Do those trains that operate to and from Fulton, both on the main line and on the east-west line, make connection

with the main lines south and north?

A. At Fulton.

[fol. 2515] Qr-Have you prepared an exhibit showing possible discriminations to interstate traffic?

A. Yes, I have,

Mr. Miller: I understand this exhibit is to show only possible rather than actual discriminations, is that correct?

Mr. Gray: The question as stated was whether he had prepared one to show possible discrimination. Whether that has happened has not been answered yet.

. Could I have that exhibit marked, Mr. Examiner?

Examiner Stiles: The exhibit just distributed will be identified as Exhibit No. 5:

(Exhibit 5, Witness Tucker, marked for identification.)

# By Mr. Gray:

Q. Briefly explain just what this exhibit shows.

A. The exhibit marked 5 for identification is to show the possibility of a passenger who is, in fact, an interstate

passenger, taking advantage of the intrastate rates.

Example No. 1 shows the rate from Paducah, Kentucky, to Cincinnati, Ohio, for a round-trip coach, \$13.80. That passenger could purchase at Paducah a round-trip coach ticket to Louisville, Kentucky, for \$7.48, and at Louisville, as he is leaving the train anyway, all coach passengers changing trains at Louisville, he could purchase at Louisville a round-trip ticket from Louisville to Cincinnati for [fol. 2516] \$4.80, making his total outlay \$12.28. Whereas, had he purchased at Paducah a round-trip coach ticket to Cincinnati, he would have paid \$13.80, making possible a saving of \$1.52.

Q. How long a wait is there between the arrival at Louisville and the departure from Louisvilel to Cincinnati?

A. Passenger trains arriving at Louisville in the evening at 5:50 have a connection out at 7:00 p. m., giving the passenger an hour and ten minutes at Louisville.

Passenger trains arriving at Louisville in the forenoon, at 8:05 give to the passenger 25 minutes, leaving at 8:30

for Cincinnati.

Q. What line makes the connection at Louisville?

A. The B. & O. for Cincinnati passengers.

Q. Does that train leave from the same train that the

Illinois Central trains arrive at in Louisville?

A. The Illinois Central Railroad and the B. & O. Railroad have a joint station at Louisville, Kentucky, and it so happens that it leaves from an adjoining track in the same station.

Q; Where do these passengers go after arrival in Louis

ville prior to the departure on the B. & O.!

A. It is necessary in order to clear the station platform that all passengers acriving on either the morning or evening train be sent into the station; the station forces are instructed to put them in because the B. & O. train in neither case is ready to leave.

[fol. 2517] Examiner Stiles: Did you give this connection for the morning train also

The Witness: Yes, sir; 8:05 and 8:30—25 minutes between them.

By Mr. Gray:

Q. On Exhibit 5, in your example No. 2 on your Exhibit No. 5, how long a wait is there between trains or how long does the train stop at Fulton, Kentucky?

A. In the case of the train arriving at Fulton, Kentucky, in the morning, there is 25 minutes between the time of the arrival of the passenger from Louisville until the train that would take him south leaves; in the case of the train arriving at Fulton, Kentucky, in the evening, there is 20 minutes between the time of arrival and departure for points south.

Examiner Stiles: Both hauls there are on the Illinois Central Railroad?

The Witness: That is right.

By Mr. Gray:

Q. What do examples A and B on your Exhibit No. 5

show, Mr. Tucker?

A. The purpose in presenting examples A and B was to give illustrations of the difference in per mile rate paid by passenegrs intrastate and interstate. For example, a passenger at Fulton, Kentucky, travelling 221.6 miles to Grenada, Mississippi, pays \$8.95 for a round-trip coach fare. If the same or another passenger wished to travel to Cecilia, Kentucky, a distance of 223.4 miles, he would [fol. 2518] pay only \$7.43, or have a difference of \$1.52 in his favor, in favor of the intrastate passenger.

Q. Mr. Tucker, your exhibit here deals with round-trip coach fares. What is the present one-way fare on the Illinois Central Railroad in Kentucky?

A. 2.2; there is no application for reduction, of course, in that.

Q. You mean there is no application for an increase in the 2.2?

A. That is right, no application for increase in the 2.2.

Q. Is this exhibit prepared by you or under your direction?

A. Prepared by me, yes.

Q. Is it true and correct to the best of your knowledge and belief?

A. Yes, sir, it is.

Q. Could you have given numerous other examples of this same situation on the Illinois Central Railroad?

A. Yes, sir, this was prepared with only one example in each case for brevity only; the same comparison could exist between any two stations on the entire railroad.

Mr. Gray: I offer Exhibit No. 5 into evidence. Examiner Stiles: Exhibit No: 5 is received in evidence.

(Exhibit 5, Witness Tucker, received in evidence.)

Mr. Gray: That is all on direct, Mr. Examiner. Examiner Stiles: Is there any cross examination? [fol. 2519] Mr. Holifield: Yes, sir.

Cross-examination.

## By Mr. Holifield:

Q. Your exhibit simply illustrates the possibility that a passenegr might engage in the practice that you object to!

A. That is correct.

Q. You don't undertake to show any instance where that has been done?

A. We do not.

Q. Personally, you don't know whether it is being done or not, do you?

A. We do not, ho.

Q. When a passenger arrives at Fulton, Kentucky, going south, in the morning he has 25 minutes there, and in the evening 20 minutes, I believe?

A. That is right.

Q. Now, the situation at Fulton, Kentucky, is that at the station where this train arrives, there are four or five tracks, isn't there?

A. That is right.

Q. In order to make this exchange, that passenger would have to get off of the train and go across those four or five tracks to the depot in order to get his ticket from Fulton, Kentucky, to the points south?

A. That is correct, except his going across the tracks: [fol. 2520] that is hardly a point of any interest, I suppose, but it so happens that the train from Louisville arrives at Fulton on the track nearest to the station. I doubt if that would have any bearing on whether he followed the practice or not.

is had

Q. And if he had baggage with him, he would have to leave that baggage in the train or carry it with him, wouldn't he?

A. That is right.

Q. And then when he got to the station, he would find the agents busy and when he called for his ticket, he would have to wait until they had an opportunity to wait on him, isn't that correct?

A. At that time, I don't think that he would have any trouble whatsoever in purchasing a ticket. We haven't left any passengers there who wanted to buy tickets.

Q. Isn't it a fact at that point that you take off your din-

ing car?

A. Yes, sir.

Q. And you put on a new dining car there?

A. No, not exactly that, but what happens is that from the Louisville train they take a Pullman car.

Q. And the coach, that occurs regularly, and sometimes extra coaches?

A. Yes.

Q. People have to move out of that coach?

[fol. 2521] A. No, they don't take those off. It is like this, they take them from this train from Louisville and put them on the train coming from Chicago, and insofar as the passenger is concerned going through, he has had a through car from Louisville to New Orleans. The passenger who is going through does not have to transfer unless he wants to.

Q. Has your railroad taken any precautions to prevent passengers engaging in the practice that this exhibit is

made to illustrate?

A. Consideration was given to it, but because we could think of no value—nothing that we could do about it, it didn't seem to be worthwhile to establish it. There is no penalty we can place on it. If the passenger came into our office and said he was going to do it, we would still have nothing to do to prevent him from doing it.

Q. Yes, but the conductor would know that that passenger had made the trip from Louisville to Fulton, wouldn't be?

A. The conductor on the train?

Q. Yes.

A. But they change conductors there.

Q. At Fulton?

A. Yes, sir, at Fulton, we change the entire train crew.

Q. On changing conductors, your conductor from Louisville, Kentucky, could furnish information as to the number of passengers he had to the points south and to the points at [fol. 2522] Louisville, couldn't he!

A. Yes.

Q. And by his having that information, he could detect the old passengers getting tickets there, couldn't he?

A. No.

Q. You think not?

A. The conductor on entering Fulton—we will take that, for example—he would tell the conductor leaving Fulton—that he had 30 passengers, we will say, from Memphis. He would count the tickets he held through to Memphis and not the passengers. But insofar as the conductor from Louisville was concerned, this passenger that bought a ticket to Fulton would be a Fulton passenger and not a through passenger. What it would amount to, he would originate at Fulton, so far as the new conductor is concerned and terminate at Fulton, so far as the old conductor was concerned.

Q. Do you want this 13th Section case sustained solely to protect the Illinois Central Railroad from this practice that you filed this exhibit to illustrate?

A. To protect them from?

Q. To protect them from the passengers engaging in this practice that this exhibit was filed to illustrate?

A. I would say that there was some monetary considera-

tion there.

Q. Is the Illinois Central Railroad not making sufficient [fol. 2523] money on its passenger traffic at this time to pay

operating expenses and a reasonable profit?

A. Well, those statistics are not available to me. I could say that the reports made to the Interstate Commerce Commission show these figures and that is not in my department to determine whether it is at a loss or making money.

Q. Isn't it a fact that while you have about 92 stations between Fulton and Louisville, that you only accommodate 14 stations between those points for passenger service?

A. Fourteen stations are being served.

Q. There are only 14?

A: I am not substantiating the figure of 92 stations.

Q. Well, in the neighborhood of that?

A. I think it runs 63 that could really be counted as stations, because to make up any figure higher than that, a

lot of the others would need to be abandoned for lack of traffic.

Q. The raise in the interstate passenger rate was granted to you in October, 1942?

A. That is right.

Q. And in September, you ceased to furnish local service to the portions of the Illinois Central Railroad from Fulton to Louisville on all stations except fourteen between those two points?

A. Yes, sir.

[fol, 2524] Q. And it is only those fourteen stations where a person could get on where he could possibly engage in this practice that you are complaining of?

A. Yes, sir.

Q. Might be—you don't know whether it is being done or not, do you?

A. Correct.

Q. Well, now, if the train should come into Fulton late, say it was 30 minutes late, it wouldn't remain over at that station a full 25 minutes or 20 minutes, would it?

A. It would make connection immediately if it were suffi-

ciently late.

Q. Isn't it a fact and don't you know that practically every train that arrives in Fulton, Kentucky, and every train on the Illinois Central Railroad that arrives at Louisville, Kentucky, is late?

A. No.

Q. That is not a fact?

A. No, that is not a fact.

Q. Well, aren't a majority of them late?

A./Not a majority.

Q Are some of them late?

A. I could get those statistics for you.

Q. I would thank you to put them in this record because have heard universal complaint about that?

[fol. 2525] Mr. Gray: I object to that, to furnishing that additional information.

Examiner Stiles: Is there a gate man there?

The Witness: Where? At Fulton?

Examiner Stiles: Wasn't it at Fulton where he talked about the trains being late?

The Witness: He asked about both Fulton and Louis-

Mr. Holifield: I am speaking of both places.

Examiner Stiles: Where are the passengers to make the change where there are 20 or 25 minutes between trains?

The Witness: That is at Fulton.

Examiner Stiles: Is there a gateman there? The Witness: No, sir, and not even a gate.

# By Mr. Holifield:

Q. The passengers actually get off out in the yard, isn't that a fact? There is no gate or gateman there, but there is a gateman at Louisville.

A. I wouldn't say that the passengers get off in the yard

at Fulton. There is a gateman at Louisville.

Q. And the gateman would know about that, isn't that a fact?

A. He wouldn't know whether the practice was followed or not. A passenger coming up from any point on our line from Fulton to Louisville would get off with the other passengers and pass through the gate, whether he went uptown or whether he disappeared as a Louisville passenger, or whether he went into our ticket office and there purchased [fol. 2526] ticket to Cincinnati couldn't be determined by the gateman.

Examiner Stiles: Where there is a gateman and a passenger walks up to him and says, "I want to take this train and I still have to get my ticket", will he hold the train for that man to buy his ticket?

. The Witness: That would be true at Louisville, it would

be done at Louisville.

Examiner Stiles: Wherever there is a gateman, that would be done?

The Witness: Yes, sir.

Examiner Stiles: But at Fulton, that couldn't occur, because you have no gateman there?

The Witness: That is right.

## By Mr. Holifield:

Q. In that instance, you would have noticed that this passenger was fixing to practice what you are trying to illustrate by this exhibit?

A. In Louisville?

Q. Yes.

A. No, the fact that he said that—there have been many times before that there was chance to practice a defeat

of this rate. For instance, a passenger would come in at some station down the line where the ticket agent either because he was busy or didn't have his rate sheet, that he sold the man a ticket to Louisville only, and it has been a part of the work in our department to curb short sales, [fol. 2527] however, it exists all the time. For instance, the ticket man or the ticket agent will say to a prospective passenger, "I will sell you a ticket to Louisville and you can repurchase there", and that was done even before this thing ever came up.

Q. In other words, your officers are encouraging this

thing?

A. I mention it to show that this thing has happened before and that it could happen now, but no officer is encouraging it.

Mr. Fisher: I would like to ask a question at this point.

Have the employees, or does the company have any authority to prevent them from doing this practice?

The Witness: No, sir.

Mr. Fisher: And even if they did know it, there would be no way to prevent it?

The Witness: That is right.

#### By Mr. Holifield:

Q. In other words, you mean that your company, that the possibility is here, but the probability is so small that you have made no effort whatever to keep people from practicing this thing?

A. Our reason for making no effort is because we could do nothing about it. There is no need to load your gun when

there is nothing to shoot.

Q. In other words, you have just hoped that the Commission will construe that there is game?

A. That is right.

[fol. 2528] Q. Now, formerly, before October 1, 1942, you gave the citizens of Kentucky at all stations between Louisville and Fulton an opportunity of transportation service.

A. We offered it to them, but they didn't accept it very

well.

Q. Now, at the present time, speaking of expense, if a man at Pryorsburg, Kentucky, wanted to go to Louisville, Kentucky—Pryorsburg is six miles south of Mayfield—in order to go to Louisville, Kentucky, on your train, that man

would have to get some other mode of transportation for that six miles before he could get any service over your line, isn't that correct?

A. Yes, sir.

Q. You don't stop at Pryorsburg or at any of the other 70-odd stations?

A. We don't stop between Fulton and Mayfield. Mr. Holifield: That is all.

#### By Mr. Marks:

Q. You spoke of offering service to those stations other than the 14th, and that it was not used to any great extent, Have you made any offer or effort recently to serve those points?

A. We are prevented from establishing any new service through the ODT order.

Q. Have you had any recent request to serve any of those stations recently?

A. There was a request from Vine Grove to add that as a [fol. 2529] stop of the regular train—not for the addition of any train service. I believe that hearing was brought up here. That is the only case that has come to my attention.

Q. Are you aware of any request having been made by the folks at Gilbertsville?

A. Not recently. There was a request made through a petition addressed to the railroad itself, I believe as long ago as October of last year, and by examination of the letition and a conference with the Kentucky dam authorities at Gilbertsville, and the conference held with the man who was appointed, the request was withdrawn.

Q. In view of the difficulties of travelling today, don't you believe that a lot of those points would like to have service today where they may not have used it to any great extent a few years ago?

A. It is quite possible.

Mr. Marks: That is all.

## By Mr. Holifield:

Q. Will you put in evidence the facts as to whether or not you are late with your trains for a period of 90 days selected by you?

A. Let's make it for the 90 days immediately next prior to this, if you wish.

Q. That is satisfactory.

Mr. Gray: I don't think that is necessary, and I see no reason for putting that in the record and putting us to that [fol. 2530] trouble and expense of getting it up.

The Witness: I think personally since the question has been raised that I would like to present it for the record

here.

Mr. Gray: All right.

The Witness: For the reason that it wouldn't show more than 25 per cent; it would show less than 25 per cent off time operations.

Mr. Holifield: If it is in your favor, I wan you to get the beenfit of it, and if it is against you, then I think you should

get the benefit of it that way too.

The Witness: Our record is the highest of any rail line in the city of Louisville for an time operations.

Mr. Holifield: You file that and send me a copy of it.

The Witness: All right.

Examiner Stiles: What does counsel say? Mr. Gray: If he wants to file it, all right.

Examiner Stiles: Counsel is willing to submit it.

Mr. Gray: Yes, sir, if you will give us ten days, and we will submit copies of it to counsel of record.

Examiner Stiles: You can furnish that within ten days?

The Witness: Yes, sir.

Examiner Stiles: Permission is granted to furnish within ten days a statement showing the extent of lateness of arrival of this Respondent's trains at Louisville over a repre-[fol. 2531] sentative period.

Mr. Marks: And at Fulton too? Examiner Stiles: And at Fulton too.

Mr. Gray: Plus the main line east and west-both main line and east-west operations.

The Witness: No, just east-west he is interested in-

Examiner Stiles: That should be furnished to the secretary of the Commission, sending two copies to the secretary and advising him in your letter that you have served copy on other counsel of record. Now, is it clear in the record as to which trains that is to cover?

Mr. Gray: I want to put in the main line trains at Fulton

also; you might as well get the complete picture.

The Witness: They are not involved in the question raised.

Mr. Gray: If you will allow me to ask you a question—if the main line train going south was late coming into Fulton, would that give additional time for the passengers to make the change?

The Witness: Yes, sir.

Mr. Gray: Let's get the whole picture.

Examiner Stiles: Permission is granted to include that also.

The Witness: And when you put that in too, I believe that your statement that it is a big task to get the whole thing up is very true.

[fol. 25?2] Mr. Holifield: I am not requesting that,—that is his request. I know that it would be more work for you.

Mr. Gray: Will you put it this way—that permission is granted and if possible, we will get the main line also?

Mr. Holifield: Yes, sir, that is all right.

Mr. Gray: I have no more questions on direct.

Mr. Miller: I have one or two questions.

## By Mr. Miller:

Q. Does the Illinois Central Railroad operate any of these so-called deluxe trains through the state of Kentucky, and by deluxe trains, I mean trains with air conditioning in the cars, and so forth?

A. Yes, sir, air conditioned, but not stream lined. The coaches that go through from Louisville to New Orleans are described in our own literature and that used by the public as deluxe equipment, because it is air conditioned and it has reclining seats.

Q. Do you operate any trains wholly within the state of Kentucky? By that, I mean trains starting and ending their schedule within the state.

A. Only the mixed trains referred to in the list of the services that I gave.

Q. By mixed trains, you mean mixed passenger and freight cars?

A. Yes, sir.

Q. Are the cars on those mixed trains air conditioned? [fol. 2533] A. No, sir, they are not.

Mr. Miller: That is all.

## Redirect examination.

## By Mr. Gray:

- Q. On our main line running through the western tip of Kentucky, we do have streamlined trains that run through the state?
  - A. Yes, sir, however fley do not have service.
  - Q. They stop at how many points in Kentucky?
  - A. Only at Fulton.
  - Q. What is the distance through Kentucky on that run?
- A. I would say offhand approximately 50 miles. I will look it up. The distance operated wholly within the state of Kentucky is 37 miles of streamlined train service.

Mr. Gray: That is all on redirect.

Recross examination.

By Mr. McCarthy:

- Q. Your mixed trains from Princeton to Henderson and Princeton to Hopkinsville do not render nearly the good service that your other trains render?
  - A. That is correct.
- Q. Do you think it fair to ask that the fare be increased on those trains when you do not give such service as is already being charged by the Linois Central on other trains?
- A. If in any place there was a differential between the services of trains based on this claim that the service was not so good—now, this is merely my own opinion—but it [fol. 2534] would seem correct it should not be done, but since there is not, for uniformity for which we are striving in this case, there should be no allowance made for this service.
  - Mr. Gray: That brings up another question to me.

Redirect examination.

By Mr. Gray:

- Q. Do both interstate and intrastate passengers ride on these mixed trains?
- A. It is possible for them to do so by purchasing through tickets outside of the state.

Q. If an outside of the state passenger purchases a ticket to a point on this line, is there any other service he could get on the Illinois Central Railroad without riding these trains?

A. No, sir.

Recross examination.

By Mr. McCarthy:

Q. Your trains are terribly crowded now, aren't they?

A. Our reports show them to be only about 10 per cent standees. I am speaking only of trains that I have my own knowledge of—that is only between Louisville and Fort Knox.

Q. And these persons who have to stand on the trains do not get the same service they did several years ago when they didn't have to stand?

A. That is right.

Mr. McCarthy: That is all.

[fol. 2535] Redirect examination.

## By Mr. Gray:

Q. Are those interstate or intrastate passengers?

A. To make an estimate, I would say not more than 10 per cent of them are intrastate.

Mr. Gray: That is all.

Recross examination.

## By Mr. Holifield:

- Q. Which,—of the standees?
- A. Yes, sir.

Q. Only 10 per cent of the standees are intrastate?

A. Fully 75 per cent of all the standees are being Louisville and Fort Knox, and I would say that the majority of those people are soldiers who are going on furlough, and he would purchase at Fort Knox a through ticket to some point in the East. Those not going on furlough along that line seldom use the railroad because the bus service is so frequent.

- Q. And that soldier purchases his ticket on a reduced rate, is that correct?
  - A. Yes, sir.
- Q. By virtue of an agreement with the Federal evern-
  - A. Yes, sir.

Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: Call your next witness.

Mr. Oliver: I will call Mr. Tolleson.

[fol. 2536] E. M. Tolleson was sworn and testified as follows:

Direct examination.

## By Mr. Oliver:

Q. Give your name, residence, and occupation.

A. E. M./Tolleson, Somerset, Kentucky, Superintendent, CNO&TP Division of Southern Railway System.

Q. State how long you have held your present position and, briefly, what your previous operating experience has been.

A. Five months. Assistant Trainmaster, Terminal Trainmaster, Trainmaster and Superintendent.

Q. Have you served as superintendent in any other territory other than Kentucky?

A. Yes, sir, I served as superintendent at Selma, Alabama, over the Mobile Division and Hattiesburg, Mississippi, over the NO&NE Railroad extending between Meridian, Mississippi, and New Orleans, Louisiana.

. Q. And that experience as superintendent covered how long a period?

A. Three years.

Q. In your present position as Superintendent, over what portions of the lines of Southern Railway System do you have immediate jurisdiction?

A. The CNO&TP Division, extending from Cincinnati, Ohio, to Chattanooga, Tennessee.

Q. Are you generally familiar with operations on the [fol. 2537] other lines of Southern Railway System in the State of Kentucky?

A. Yes.

Q. Are you generally familiar with the operating conditions on other railroads operating in Kentucky?

A. Yes.

Q. In what states do the lines of Southern Railway Sys-

tem operate?

A. Mississippi, Alabama, Georgia, Florida, Tennessee, Kentucky, North Carolina, South Carolina, Louisiana, Illinois, Indiana, Virginia, Ohio and District of Columbia.

Q. How much of the mileage of these lines is in Kentucky?

A. Approximately 339 miles.

Q. Are the railroads operating in Kentucky confronted with any unusual difficulties or expenses in connection with passenger operations under present day conditions?

A, Yes. ...

Q. Please illustrate what you have in mind as to "unusual difficulties and expenses in operation," leaving out of consideration for the moment troop train movements?

A. A heavy increase in the volume of passengers to be handled has necessitated additions in our porter and ticket office personnel at greater cost, with increased expense in

lights and fuel, at all key points.

Transportation of materials incident to war has increased density of traffic on mileage operated within the State of [fol. 2538] Kentucky, resulting in passenger trains being delayed by congestion of freight trains and late passenger trains in turn further delaying freight trains, causing all trains to consume more time on line of road, with increased costs in:

- 1. Overtime paid train and engine crews, operators and others involved in the handling of trains; and
  - 2. Fuel and other supplies.

Heavy mail and express movements, particularly to and from Military Camps, have in some cases brought about the daily handling of service cars (mail and express) from regular trains in separate sections, at double the costs in wages, fuel and supplies, whereas in normal times these service cars could be moved in one train with little difficulty; and, of course, extra cars handled on regular passenger

trains for accommodation of troop movements and other overflow travel often necessitates doubleheading at extra expense. As a matter of fact, we are now daily operating four extra, or service, sections of our regular trains on the CNO&TP Division (comprising 200.5 miles of the total of 337.1 miles operated by the Southern Railway System lines in Kentucky) to take care of the heavy movement of mail and express, and in order to expeditiously handle passenger carrying sections which, otherwise, would be over-burdened.

Q. At this point, do I understand it that you take your mail and express out of your regular trains and run them

[fol 2539] in extra sections, is that right?

A. Yes, sir.

Q. Are these extra sections full load cars or are they less than your full load trains?

A. As a day in and day out operation, they are less than the full load.

Q. How many cars do you handle normally, or can you handle normally in a passenger train on the CNO&TP Division?

A. Normally twelve cars because of the grade conditions.

Q. And these extra sections that you operate, how many cars do you handle in those extra sections?

A. They usually run from three to four cars, that is RPO, and then your storage mail, and then your express.

Q. Do you use a full crew in operating these extra sections?

A. Yes, sir.

Q. All right, proceed with your statement, please, sir.

A: The holding of regular trains at Terminals to pick up carload troop provements also enters into delays on line of road not conducive to normal economical operation; and the increased cost involved in the switching of cars to and from regular trains all over the system is large.

A large number of extra cars are handled on regular passenger trains for special troop movements alone, aside from the large number of extra cars handled for the overflow movement of troops on leave, etc., and the travelling public gen-[fol. 2540] erally. It follows that additional mechanical forces have been employed in the inspection of and repairs to passenger cars, and that the force necessary in cleaning, icing and watering this equipment has been greatly augmented. Too, engine house expense incident to the handling of the larger number of engines engaged in doubleheading,

etc. has increased and it has been necessary to draw passanger engines from other localities at additional expense

for use in handling the business.

Q. Do the railroads encounter any unusual diffculties or incur any unusual expenses in the movement of troop trains! Please explain what you have in mind in this connection.

A. Yes.

Q. Please explain what you mean in this connection.

· A. Many large encampments and training stations are located on Southern Railway System lines, involving much difficulty and expense in the handling of troops to and from them. Special train troop movements are given precedence. over other trains with resultant delays to other traffic that brings about additional expense, despite the fact that our dispatching force has been doubled and many additional telegraph operators employed so that trains may be given orders promptly and moved with all possible rapidity. At the request of the War Department a special representative. of either our Freight or Passenger Traffic Departments [fol. 2541] accompanies each special train troop movement over Southern Railway System lines, at added cost in travelling expenses, not to mention time lost from other duties.

Large and small movements are constantly in progress. some of them on extremely short notice, and in many cases it is necessary to haul the empty equipment to the loading points in special trains with freight crews, paid the higher freight wages, at extra out-of-pocket expense. Often loaded equipment is handled into camps at outlying points; the crews released and deadheaded or run light back to their home terminal at extra expense; and then twenty-four hours later it is necessary to run another crew light from the home terminal to handle this same equipment either loaded or empty to some other point:

The notice is so short at times on outbound loaded movements from the camps we are forced, in order to avoid delay, to have through freight train crews set their entire train of high class and important freight out in sidings near the camps, move the troop trains and meanwhile, send another freight crew light with caboose from the home terminal, a distance of some eighty to one hundred miles, to move the freight train to the terminal at double or more

what it would have otherwise cost.

Much additional switch engine and hostler expense is involved in the spotting of baggage and kitchen cars for [fol. 2542] loading and unloading and in the breaking up and making up of special train movements; many times brought about by lengthy delays on the part of military authorities in carrying out their arrangements.

Our payments to foreign lines in equipment hire for use of their coaches are very high because of the fact that we have but a small surplus of coaches over and above our regular passenger train requirements and more than 50 per cent of our troop movements in coaches are handled in

foreign line cars.

Additional forces have been added for the sole purpose of cleaning and servicing passenger equipment for troops, and often they work overtime hours at time and one-half pay in getting cars ready for outbound movement on short notice when they arrive from distant points via regular and special trains.

Since January 1, 1943, the CNO&TP Division alone has operated approximately 570 special troop trains, involving the use of 1400 engines and 5900 cars. All of these trains were operated with pool freight crews and freight engines (because of the scarcity of passenger engines and passenger crews as such). This, of course, meant that we were deprived of the use of this power and these crews, at least in one direction, in freight service, and, naturally, with the volume of freight traffic to be handled, this brought about much congestion in our yards, with resultant increased [fol. 2543] expense.

Q. Are all of the costs incident to troop train movements reflected in passenger expenses, or do some of these costs

show up in freight expenses?

A. All costs incident to troop train movements are not reflected in passenger expenses; on the other hand some of the costs show up in freight expenses.

Q. Give some illustrations of the cost incident to troop

movements which are reflected in freight service.

A. Because of being forced to use freight crews and engines to a large extent in handling troop train movements, the dispatch of freight cars from yards is naturally delayed, with resultant overtime and increased consumption of coal because of the congestion bringing about additional switching and delays to trains getting in to the terminal. Too, the side-tracking of freight trains in preference to troop

train movements naturally causes freight trains to be delayed and be longer in making terminal to terminal trips, and causing more fuel to be consumed at increased cost, and, in many cases, resulting in overtime being paid the freight crews.

Q. Is it or not a fact in your regular trains you have supplemented your regular train crews, or you have two train

crews?

A. As to the division over which I have supervision, we have done this on all through regular trains; we have [fol. 2544] added the second train conductor, making two train conductors; and we have added the second train porter, making a total of two train porters, and we have added the head brakeman who is a white man, and who is an employee we have not heretofore employed on our trains.

Q. Do all of the passenger trains operated by Southern Railway System lines in Kentucky handle both interstate

and intrastate passengers?

A. Yes:

Q. Is there any difference in the service afforded by your lines to intrastate and interstate passengers?

A. No.

Q. Based upon your experience and your observation, would you say that this is true as to all of the railroads operating in the State of Kentucky?

A. Yes.

Q. Are you familiar with railroad operating conditions generally in other states in the South?

A. Yes.

Q. Are the operating conditions in Kentucky similar to the operating conditions in other states in the South, or do they differ from the operating conditions in those states?

A. Operating conditions in Kentucky are similar to:

operating conditions in the other states in the South:

Q. You heard the testimony of Mr. Aiken, did you not?

[fol. 2545] A. Yes, sir.

Q. He testified as to his general knowledge of the defeat of the interstate rates by the purchase of intrastate tickets for portions of the journey or the payment of eash fares on trains. Have you any knowledge with respect to that situation as to the practice in the territory over which you have jurisdiction of the Southern Railway lines?

A. I listened very carefully to Mr. Aiken's testimony, and I have, since that time, checked this exhibit which re-

flects a setup whereby a passenger travelling from intrastate to interstate, so to speak, could get off at an intrastate point and rebuy, and, frankly, I don't know of any happening of that particular kind, but here is one thing that we have been troubled with on my division for quite some time, and that is the fact that passengers enroute to Cincinnati from Stearns, Kentucky, Somerset, Danville and Lexington will buy a ticket to Ludlow and stay on the train and ride over the river into Cincinnati.

Q. Where is Ludlow with reference to Cincinnati?

A. Ludlow, Kentucky, is just across the Ohio River on the Kentucky side from Cincinnati, and I would say, offhand, that it is about a mile and a half, or possibly a little more than that from Ludlow into the Cincinnati Union Terminal.

Mr. Miller: I move that the testimony just given in the record in answer to the last two questions be stricken as [fol. 2546] hearsay unless the witness can testify of these incidents of his own knowledge.

Mr. Oliver: I will ask the witness a question, Mr. Exam-

iner, to clear up that point.

## By Mr. Oliver:

Q. Do you know of your own knowledge that this situation does exist with respect to the purchase of tickets to Ludlow, and if you do know that, state for the record where you get that information?

A. I have never been on the train and seen a passenger actually do that, but as superintendent of the division and getting reports daily from the passenger conductors operating on that train, and one in particular citing to me an instance where he collected the difference between the intrastate and the interstate rates where the found the passenger riding into Cincinnati when he should have gotten off at Ludlow, I am forced to believe it is a fact.

Q. Are these reports made to you by the conductors in the course of the performance of your duties as superintendent of the CNO&TP, a division of the Southern Railway System?

A. Yes, sir,

Mr. Miller: I still move that the testimony be stricken as hearsay.

Examiner Stiles: The motion is denied.

Mr. Miller: Will you note an exception, please?

## By Mr. Oliver:

Q. Please proceed with your statement about that and [fol. 2547] what the reports of your conductor show about that situation.

Examiner Stiles: I might call attention of counsel to the fact that under the new rules of practice, the practice at present is not to note an exception; it means nothing to say that on the record. It you want to press your objection, you must do so in your brief.

Mr. Miller: All right, sir.

Examiner Stiles: And that takes the place of the former noting of an exception.

Now, answer the quustion.

The Witness: The conductors, and I might say when I say "conductors", I mean each and every train conductor operating over our division to Cincinnati have individually and personally reported to me that that is a practice that is going on; that they have been unable to cope with it, and the thing that brings it about is this: all of our through trains, particularly those through trains that stop at those points in Kentucky that I have named in my testimony, are crowded, they are crowded to the extent of passengers standing in the cars; the conductors are, therefore, unable in the short time it takes the train to move from Ludlow to Cincinnati to get to those passengers and collect the additional fare from them before the train reaches the Cincinnati Union Terminal. Our conductors have operated on [fol. 2548] the division for many years; they have learned their duties through observation; they tell me that they get to Ludlow and about five people will get off when they know that they have loaded some 15 or 20 passengers for Ludlow because they have gotten their tickets for that point, and they know that the practice goes on. It is not hearsay on their point; it is an actual fact.

Examiner Stiles: How far is Ludlow out of Cincinnati? The Witness: It is just across the river, sir; I guess that it is about a mile and a half or it may be two miles from Ludlow into the Cincinnati Union Terminal. It is true that we show that distance in our schedule as 3, but that 3, I am not trying to gainsay that is correct in the time-

-L. 1

table, but I would say that by actual measurement, it is not more than two miles, but the fact is a conductor can't work six or seven crowded coaches with people standing in the aisles, and in the vestibules in a distance of three miles to find where the passenger is that didn't get off at Ludlow.

Examiner Stiles: In other words, it is only a few minutes run in any event from Ludlow to the Cincinnati Union

Terminal?

The Witness: Yes, sir, I would say less than five minutes at any rate.

## By Mr. Oliver:

Q. Would you definitely know the passenger that had paid his fare only to Ludlow and remained on the train?

A. It would be difficult to do it; in times when passengers [fol. 2549] were always able to find a seat in a coach, we were able to use a hat check system, but the only way they could get their fares now and keep some people from beating the railroad out of their fare is to collect the tickets as the passengers get on the train, and that is what they do on my division in either tickets or cash fares. On one particular case where I have stated the incident that happened, and I will be glad to name the conductor that told me about it if it is necessary—he is the local chairman of the conductors over there, and he was operating on a local train where they had only two cars, and for that reason he was able to catch the passenger between Ludlow and Cincinnati, because the train was not overcrowded, and on that occasion he collected the difference in the fare.

Q. The man that indulges in that practice pays the intrastate fare to Ludlow instead of the interstate fare of 2.2 cents per mile to Circinnati from wherever he starts his

journey, is that correct?

A. Yes, sir.

.Mr Oliver: That's all, I believe, for this witness, Mr. Examiner.

Cross-examination

# By Mr. Holifield:

Q. The fellow that is practicing what you are complaining of is getting to ride 21/2 or 3 miles and doesn't pay for it at all?

[fol. 2550] A. That is right, sir.

Q. And the changing of the passenger fare wouldn't har

that dishonesty!

A. No, sir, but if I may make this observation,—and it is purely my own observation—I think the reason they do that is that the intrastate fare to Ludlow is very attractive, it is low; they are going to Cincinnati all right, but they have learned by travelling to and from those points that there is a possibility, or, in fact, a probability of their being able to get into Cincinnati without their being detected, and because of this low fare to Ludlow, they buy their ticket to Ludlow and ride on into Cincinnati.

- Q. You also know that there is electric car service from Ludlow to Cincinnati!
  - A. Yes, sir.
  - Q. And at a very moderate rate?
  - A. Yes, sir.

Q. And all they have to do is to step off the train at Ludlow and get on that electric car if they didn't want to cheat the railroad out of this additional mileage?

A. The bus that they would catch just carriers them to Fourth and Sycamore whereas if they go into the terminals, they are closer to many points in Cincinnati than if they rode the bus over to Cincinnati from Ludlow:

Q. But if they raised the fare, it wouldn't keep men from [fol. 2551] doing what you are complaining about, would it?

A. That is the situation, and I would say that they would have to pay more in buying their ticket to Ludlow than now.

Examiner Stiles: Would there be any inducement for them doing it if the intrastate fare were raised?

The Witness: I don't know about that.

Examiner Stries: As I understand it, the difference in fare would be about 7 cents between Ludlow and Cincinnati if we raised the intrastate fares to 2.2 cents per mile?

The Witness: I got \$4.25 as against \$4.36 as shown in Mr. Aiken's exhibit.

Examiner Stiles: Then they would have to pay a local transportation fare to get across the river on the bus that you spoke of?

The Witness: Yes, sir, that is right.

#### Redirect examination.

## By Mr. Oliver:

- Q. You didn't mean to indicate the only saving was the saving in the fare for the journey from Ludlow into Cincinnati, did you, when you said in answer to the General's question that the passenger merely beat you out of that additional mileage? Isn't it a fact that the passenger from Danville, Kentucky, for instance, to Ludlow would pay 1.65 cents per mile for a one-way trip instead of 2.2?
  - A. Yes, sir.
- Q. And then he saves more than the 7 cents, doesn't he? [fol. 2552] A. Under present conditions?
  - Q. Yes, sir.
  - A. Yes, sir.

Q. What would be the saving, roughly, say, from Somer-set, Kentucky, into Cincinnati by that scheme?

A. I don't know whether I have got it figured out here or not.

Off the record.

Examiner Stiles: Off the record. (Discussion outside the record.) Examiner Stiles: On the record.

#### By Mr. Oliver:

Q. What is the mileage, Mr. Tolleson, from Somerset, Kentucky, to Ludlow,—have you got it before you there?

A. It is approximately 160 miles.

Mr. Oliver: I thank you, sir. That is all:

Examiner Stiles: Do you have any further questions?

Recross-examination.

#### By Mr. Holifield:

Q. The revenue that you are now deriving from the transportation of passengers is sufficiently large to contribute the passenger train quota to expenses and a reasonable profit, is it not, of operating a railroad?

Mr. Oliver: I don't believe that this witness is qualified to answer that question. He can answer if he wishes.

The Witness: I do know that the revenues from passenger trains as of today are greater than they were during the [fol. 2553] depression days, or I, would say prior to 1941.

## By Mr. Holifield:

Q. Even in depression days you made more money by having a low passenger rate than by a high rate, didn't you?

A. I don't think that I am prepared to answer that ques-

tion, sir.

Mr. Holifield: All right.

## By Mr. Marks:

Q. Is your Ludlow passenger traffic very heavy from down the line?

A. Do you mean of people destined to Ludlow proper?

Q. That buy tickets to Ludlow.

A. Yes, sir, quite heavy.

Q. Would it justify you in segregating those in a separate coach?

A. That would be impossible under present conditions.

Q. Don't you separate your passengers by destinations

when they get on a train at Cincinnati?

A. We try to keep short passengers in the head coaches, but they wander all over the train if they possibly can and they usually do. It is an impossibility under the present-day conditions to confine passengers to any one location in cars or in the trains.

Q. Don't you make some effort to see that those people get off the train at Ludlow instead of going on over into

Cincinnati?

[fol. 2554] A. Not any more than we are doing now, sir. We do our best.

Q. Is it your position that it is more expensive to handle passenger traffic in Kentucky than in other states on your line.

A. No, sir.

Q. Now, you spoke about the increased cost of operating. Are you contending that the number of additional employees and man-hours that are now put in in operating your passenger trains is greater than the increase in your passenger miles?

A. Do you mean the ratio of expense to miles!

Q. Yes.

A. No. 1 am not contending that. I really have no figures on that particular thing.

Q. Isn't it more reasonable that your man-hours should increase as your passenger hours go up?

A. What man-hours?

Q. Of the employees on your trains!

A. No, sir. As the miles increase, you say?

Q. As the passenger miles increase:

A. You mean if we operate additional passenger trains we naturally have to have more employees to man them—
is that what you mean!

Q. No, I mean this—in the Kentucky State Case, an exhibit was put in showing in the year 1938 your passenger miles on the CNO&TP in Kentucky were 34,383 and in 1942, 130,998 miles, more than four times as many. Have your [fol. 2555] man-hours in handling those passengers increased anything like four times?

A. I would be afraid to say. I have just pointed out a specific case where that additional section of the train that we are operating creates additional miles, and at the same time creates additional man hours. These additional employees that we put on our trains, the CNO&TP particularly are employees over and above any increase in passenger miles on those particular runs. We practically doubled the force on these particular trains and didn't increase the mileage any, in an effort to cope with the proper handling of the traffic.

Q. And when you doubled your employees, you about

quadrupled your passenger miles?

A. You are quoting from an exhibit there and I have no figures to offset that.

Examiner Stiles: Off the record.

(Discussion outside the record.)

Examiner Stiles: Back on the record.

Mr. Marks: That is all.

## By Mr. Holifield:

Q. On page 3, you enumerated various additional expenses that you have to pay out for the purpose of operating troop trains?

A. Yes, sir.

Q. Troop train operations are not unprofitable to you, are [fol. 2556] they?

A. No, sir, I don't think so.

Q. And you don't wish to add that extra expense upon the ordinary passenger trains that carry civilians practically altogether, do you!

A. No, sir, I don't wish to.

Mr. Holifield: That is all.

Mr. Miller: I have one question.

#### By Mr. Miller:

Q. Do these troop trains generally move in intrastate or interstate commerce?

A. Interstate in most cases.

Q. And the movement is relatively small in comparison so far as intrastate commerce is concerned?

A. Intrastate is relatively small compared to interstate.

Mr. Miller: That's all.

Examiner Stiles: Any redirect examination? Mr. Oliver: No. sir.

By Mn Marks:

Q. On which of your northbound trains do you find your Ladlow traffic the heaviest!

A. It is heavier on practically all of them; there is a heavy travel to Ludlow from the four points I mentioned on practically all our trains.

Q. And you sell a ticket and take it up on a train that

doesn't stop at Ludlow?

A. No, No. 2 is not scheduled to stop at Ludlow, but I believe you will find that is the only thing that doesn't [fol. 2557] stop at Ludlow.

Q. Does your train No. 28 stop at Ludlow !.

Q. Does your train A. Yes, sir.

Q. Your timetable doesn't so show it?

A. (No response.)

Mr. Marks: That is all.

Examiner Stiles: Off the record.

(Discussion off the record.)

Examiner Stiles: On the record. You are excused.

(Witness excused.)

Examiner Stiles: We will recess now until 2 o'clock this afternoon.

(Whereupon, at 12:30 o'clock p. m., on Wednesday, September 8, 1943, the hearing was recessed until 2:00 o'clock p. m. of the same day.)

#### Afternoon Session

The hearing was resumed pursuant to recess. 2:00 p. m.

Examiner Stiles: Call your next witness, please. Mr. Oliver: I will call Mr. Tassin, please.

J. S. Tassin, was sworn and testified as follows:

Direct examination.

## By Mr. Oliver:

Q. Will you give your name to the reporter, and state [fol. 2558] your official railroad connection?

A. My name is J. S. Tassin; General Statistician, South-

ern Railway System Lines.

Q. How long have you held your present position, and what previous experience have you had in railroad statistical and accounting work?

A. I have held my present position since 1932, and I entered railroad service in 1903. All my experience has been in various departments of the accounting department of

one or more of the Southern Railway System lines.

Q. You have prepared, I believe, an exhibit which shows, among other things, the loss which the Kentucky lines are sustaining as a result of the disparity between the interstate and intrastate fares in Kentucky and other statistical data which bears upon the reasonableness of the interstate rates, have you not?

A. Yes, sir.

Q. Now, will you proceed to discuss your exhibit, taking it up page by page with such explanation as may be necessary of the showings there made?

(Exhibit 6, Witness Tassin, marked for identification.)

The Witness: Pages 1 and 2 sum up the statistical findings and will be found self-explanatory.

I will address myself to the remaining 29 of these 31 pages and point out the significant figures of each statement.

[fol. 2559] Page 3 establishes the fact and extent of revenue loss. For the seven months ended June 30, 1943, the loss by the seven roads parties to this petition aggregate \$306,951; rated to a year's basis, it is \$526,200.

I show in comparison with this latter figure a loss of \$495,755 for the year ended June 30, 1943, and \$426,586 for the year ended February 28, 1943, showing that the loss is

growing under existing conditions.

Mr. Marks: Pardon me for the interruption there, but where you use the word "loss", what do you mean by that?

The Witness: I mean the loss in revenue, the sum of revenue that would have accrued to the carriers had the passenger business within the state of Kentucky moved on the same fares as interstate.

Mr. Marks: Isn't it just a mathematical calculation of the present fares and the proposed fares against the actual traffic?

The Witness: It is a mathematical calculation of the present fares and proposed fares against the actual traffic during these periods.

Mr. Marks: You are assuming the same amount of traffic

would have moved?

The Witness: I am taking the traffic that actually moved, the traffic subject to this case here.

Mr. Marks: And you are assuming none of it would have

[fol. 2560] been diverted by the higher fares?

The Witness: I am assuming that none of it would have been diverted by the higher fares.

Mr. Marks: That is all.

By Mr. Oliver:

Q. Insofar as the losses shown for the CNO&TP Railroad Company and the Southern Railway Company proper, I take it that those figures were prepared by you or under your supervision?

A. They were under my supervision and prepared at my direction.

Q. Where did you obtain the figures for the other Kentucky lines shown on that statement?

A. From the Chief Accounting Officer of each railroad, or as directed by the Chief Accounting Office of each railroad.

Mr. Oliver: Mr. Examiner, may I explain at this time that we have present here today accounting representatives of the Chesapeake & Ohio Railroad and the Illinois Central Railroad, the L&N Railroad Company, and the Nashville, Chattanooga & St. Louis Railway Company, who will be able to testify as to the accuracy of the figures presented on behalf of those railroads. Mr. Tassin can only testify with respect to the figures given for the Southern Railway Company, and the Cincinnati, New Orleans & Texas Pacific Railway Company, so if there are any questions as to the showings made on page 3 for the other railroads, we have accounting officers of those lines present who will be able [fol. 2561] to answer any questions for their respective companies.

·By Mr. Oliver:

Q. Proceed, Mr. Tassin.

A. Against this figure of unrealized revenue, shall I call it, on page 4 I show the result of passenger operation for the years 1936 through 1942.

Examiner Stiles: Does the Southern System embrace other than lines 8 and 13?

The Witness. The Southern System has other lines besides 8 and 13 that do not operate in the state of Kentucky.

Examiner Stiles: I meant on this page.

The Witness: On this page, no, sir, the CNO&TP and the Southern in Kentucky are two separate and distinct properties; they both belong to the Southern Railway System.

Examiner Stiles: Those are the only lines on this page

which are included in the Southern System?

The Witness: That is correct.

Examiner Stiles: The Southern Railway System lines?

The Witness: That is correct, yes, sir.

Now, this page 4, in the face of this loss in revenue shows that these lines operating in Kentucky are chronically in need of additional revenue. The fact that—

Examiner Stiles: Are these in that manner distinguished from roads in other states?

The Witness: No, I think that is generally true, and it is a matter of common knowledge that the railroads all over [fol. 2562] this country are chronically in need of additional revenue, and, for that reason, I can't-see why it would give

alarm because the railroads have a good year or two, why anyone should become excifed about the fact that in 1942 the railroads had an income and not a deficit, when in the previous six years they encountered sizeable deficits, the cumulative deficits 1936 to 1941 being \$136,387,862, and we would have to have a dozen years like 1942 to equalize that. I don't want to be misunderstood. This case is not brought to recoup past deficits, but the object in showing that comparison on this page is merely to show how unusual is a good year in railroad experience.

Mr. Miller: May I interject a statement right there. We do not object to their having a good year, Mr. Examiner, but we object to your raising your rates in a good year.

The Witness: I will let counsel deal with that in his argument.

## By Mr. Oliver:

Q. Will you proceed, Mr. Tassin, please, sir?

A. Now, on page 5-

Q. Mr. Tassin, before you leave page 4, will you state, please, why you started with the year 1936 rather than going back of that year?

A: Well, there are two reasons for that—one was because there was an adjustment of passenger fares beginning in [fol. 2563] 1936, as I understand, and the second reason is because the year 1936 is the first year in which the Interstate Commerce Commission required a reporting of the passenger deficits.

Q. In other words, that is the first year in which you made an actual separation as between freight and passenger?

A. No, we have always made, as far back as 1921, we have made a separation between freight and passenger, as to expenses, but beginning with the year 1936, the Interstate Commerce Commission required us to carry that down through to establish whether the passenger was producing an income or a deficit.

Now, in proof of the fact that these passenger deficits are in the nature of a burden upon freight, and that the combined services are not realizing an adequate return, I have prepared this page 5 for Class 1 railways of the Southern region as a whole, covering the years 1921 through 1942, showing that for the average in that period

that these roads earned only 2.48; that for the average in that entire period from 1921 through 1942, the roads averaged 3.23 per cent return on their investment, and for the period 1931 through 1942, they realized 2.48 per cent, whereas if we got back as on line 18 to the period 1921 to 1930, they earned 4.2 per cent, so the combined result of freight and passenger operations over a proper period shows that these railroads are chronically in need of additional revenue:

[fol. 2564] Examiner Stiles: Explain your investment in railway property used in transportation service.

The Witness: That is the figure that is annually returned to the Interstate Commerce Commission in Table 211-N, in Schedule 211-N of the annual report to the Interstate Commerce Commission, plus the amount of cash, materials and supplies on hand at the end of the year.

Examiner Stiles: Am I to understand that is the book value and may or may not be the value as found by the

Commission for rate-making purposes?

The Witness: I don't like to call it book value; it is book investment or book cost, if you please, and I shall offer evidence later to show that it is less than the amount of capital that would have to be raised at the current time to produce the properties that are producing these revenues. If we want comparisons of like with like, we must state the property in terms of the current dollars, because we are judging it in the terms of the current lucrativeness in terms of the current dollars.

Page 6 takes the seven roads as a group and shows that for this period, 1921-1942 the group of roads, of seven roads operating in Kentucky owned 4.3 per cent. That, of course, is due to the inclusion of such roads as the C&O earning 6.94, and the CNO&TP earning 5.50.

Examiner Stiles: Is the answer that you made to my last [fol. 2565] question also applicable to the investment column on page 6?

The Witness: It is.

Turning now to page 7, I take the returns earned by these seven roads individually and rated them in accordance with mileage, first, for the entire line, and, secondly, for mileage in the state of Kentucky. So rated on basis of the entire line, the return is cut down to 3.97, whereas in the

state of Kentucky it is 4.31, which corresponds very closely to the result of 4.30 on page 6.

Examiner Stiles: Read that answer.

(Record read.)

Mr. Holifield: I want to ask a question at this point. What do you mean by that "weighting"?

The Witness: All of these roads are not of the same relative importance; some of them are considerably larger than the others; take the C&O, for instance, with 3,092 miles, with the CNO&TP's 337 miles, so the object of this computation is to equalize for the difference in the relative importance, shall I say, insofar as that is reflected by length of line.

Examiner Stiles: Did you multiply the figure in the "miles" column by the figure in the "return" column to get the figure in the "weighting" column?

The Witness: Yes, sir, and I divided the miles into the weighting to get the weighted average rate of return.

[fol. 2566] Now, page 8 states the same proposition from a different angle. I have shown on page 7 a shortage in rate of return as measured by the 5¾ per cent that is usually utilized, but on page 8 I asked myself this question: by what per cent would revenues have to be increased in order to give these roads a 5¾ per cent return on their investment? Here to revenues and income received, I add a 5¾ per cent return on investment, and then divide that by the gross income receivable, and that shows that on basis of the entire system mileage, these roads would require 8 per cent additional revenue if they are to realize a 5¾ per cent return on the investment. Weighted in accordance with their mileage in Kentucky, the increase would be 6 per cent—that is, 6 per cent more revenue.

Mr. Miller: That is passenger only?

The Witness: Oh, no, this is total revenue.

Examiner Stiles: On the previous page, was it the total revenue also?

The Witness: Yes. All these returns are, and as I stated, the object of this showing is to show the revenues we receive from freight do not compensate us for the losses entailed by passenger. Passenger is a burden upon freight.

Now, looking to establishing the conservatives of the measure I have used, namely, investment in road and equip-

ment used in transportation service, as annually returned [fol. 2567] to the Interstate Commerce Commission in Schedule 211-N in the annual reports of the Commission, plus cash and materials and supplies on hand, that is the base cost measure I am using. I am nowheré dealing with values in my testimony,—I am dealing with costs.

Mr. Marks: Do you take into consideration depreciation?

The Witness: No, I do not, because depreciation is an element of cost, and from a standpoint of cost it is not to be deducted. There is a theory that 50 per cent operation on a straight life basis is 100 per cent efficiency. I say if that theory is true that 50 per cent of an accrual of depreciation is frozen investment and not loss, it is an essential part of costs that never has to be collected from the public because the railroads are supposed to have 100 per cent efficiency or be 100 per cent efficient when they are operating at 50 per cent of their life, average 50 per cent of the various elements of property entering into their composition.

## By Mr. Oliver:

Q. As I understand it, you can compare the showing made on page 9 with the investment in railway property used in transportation services as shown on page 6, and you demonstrate by that showing that the figures used on page 6 are conservative figures?

A. Yes sir. If you want to produce those properties today that are producing this revenue, you would have to raise from 10 to 11 per cent more money than is recorded in [fol. 2568] these investment figures that I have used.

Mr. Marks: This represents an average for 22 years on page 6, doesn't it?

The Witness: That is correct, yes.

Mr. Marks: And the figures on page 9 is merely not the average of those 22 years, but on the date of January 1, 1940.

The Witness: Yes, because that is the date as of which we have this appraisal made by the Interstate Commerce Commission showing how much money would be required today to produce these properties whose investment stands as a lower figure, about 90 per cent of it.

Mr. Marks: But if you took this average back for another

20 years, you would have a lower average?

The Witness: I am comparing it with the 1940 investment of the Commission, but not with the average investment. If you had the appraisal figures year by year, you could work it out backwards, but we only have them sporadically.

Mr. Marks: How can you say your investment for this average of 22 years is lower because it would appear that you will add to your plant as you go along? Let me put it this way—isn't your investment for 1942 higher than your reproduction cost shown on page 9?

The Witness: Do you mean for 1940?

Mr. Marks: Yes, make it 1940.

[fol. 2569] The Witness: No, it is less. That is what I am testifying to.

## By Mr. Oliver:

Q. On page 6 where you show investment in property used in transportation service, as of what date are those figures made?

A. On page 6?

Q. Yes, sir.

A. Those, as the title shows, are "Average annual rate of return—1921-1942,"—that is the caption there now. I can see the confusion that it has created in Mr. Marks' mind here,—that I have taken an average investment and divided it into an appraisal of one year, 1940. That, of course, would have been in error—I should have divided the 1940 investment into the 1942 appraisal, and I will ask permission to check back those references and make such corrections as may be found necessary.

Mr. Marks: Do you have the figures for January 1, 1940, with you, based on the book value as shown on page 6?

The Witness: I have not the book value for the year 1940 of these individual roads with me, but on page 5 I have set forth each of the years for the Southern Region as a whole.

Mr. Marks: But that is the Southern Region there.

The Witness: Yes sir, I have them by individual years, but I have not that with me for these seven roads.

Mr. Marks: Can you furnish that? [fol. 2570] The Witness: Furnish what?

Mr. Marks: So we will know.

The Witness: By individual years for these seven roads?

Mr. Marks: Let's take the book value investment for the

seven respondents as of January 1, 1940.

Mr. Miller: I think my own witness will have the evidence tomorrow, and if he wants to stay around and verify it, he can.

The Witness: I am going to stay around all right.

Mr. Marks: We will withdraw the request pending his being able to put it in.

Examiner Stiles: Then if you find that information is not given tomorrow, if you want permission to file a sup-

plemental statement, you will ask me again.

The Witness: I am going to tell you frankly right now, while I don't doubt the accuracy of those figures, I want to recheck them at the source.

Mr. Miller: If you want to check them, all right.

Examiner Stiles: You want permission on the record to file a corrected page 6, is that it?

The Witness: A corrected page 6, and carry those corrections through such subsequent pages as may be affected.

Examiner Stiles: Is ten days sufficient time-

The Witness: Yes sir.

Examiner Stiles: Permission is granted and you will send [fol. 2571] two copies to the Secretary of the Commission with the advice that you have also served copies on the other counsel of record.

Mr. Marks: I wonder if it wouldn't be in order for him to show for each year so we can check the average?

The Witness: I am entirely willing to do that.

Mr. Marks: That is for the information shown on page 6. The Witness: I have the information in my office: What you want is the figures for each year that adds up to the total?

Mr. Marks: That is correct. The Witness: I can do that.

Examiner Stiles: For what years? The Witness: 1921 through 1942:

Examiner Stiles: Proceed.

### By Mr. Oliver:

Q. Have you any further comment on page 9, Mr. Tassin? A. No, because the purpose of the page is clear; it is to

establish the conservativeness of the investment figure. Q. Figured as a measure of the operating results?

A. Yes. On page 10 for each of the years 1936 through 1942, I show a comparison of freight and passenger operating ratios, and all the way through with the exception of the year 1942, the passenger ratio shows that you spent more than \$1 to earn \$1.

[fol. 2572] Examiner Stiles: How about 1941 in the case of the CNO&TP and the Southern?

Mr. Oliver: That is right.

The Witness: In 1941 and 1942, yes, there you had a slight difference. This operating ratio, as everyone knows, is obtained by dividing the operating revenue into the operating expenses. It is not a complete ratio in that it does not include taxes and net rents payable. You might call that an outgoing ratio, and I furnish a comparison on page 11. Here, again, we see to what extent the passenger is a burden on the freight traffic.

Mr. Miller: Just to get the distinction between pages 10 and 11, the ratios on page 11 would include in the expenses taxes and rents.

The Witness: Taxes and net rents payable.

Mr. Miller: That is right. I understand it now.

The Witness: On page 12, I show the cents per passenger earrying car mile, cents of revenue earned, showing what classifications of revenue are included, namely, passenger, sleeping car, parlor and chair car, and other passenger train revenue, dining and buffet. Looking at line 14, taking 1936 as an index, we show a rather normal situation, I should say, for the years 1936 to 1940, inclusive, and a sharp increase in 1940, and then a still sharper increase in 1942, showing the improvement in revenues received from this class of [fol. 2573] service.

Mr. Holifield: That is for the passenger service?

The Witness: That is from the passenger fares, the passenger carrying cars, the revenue referred to as the rear end cars in distinction to the front end or baggage, express and mail, sometimes called and referred to as the head end cars. I give the revenue per car mile for the head end cars, namely, baggage, mail, and express on page 13, and you see a normal picture there, I would say practically all the way through. The head end, generally speaking, as you will observe, are much better revenue producers per mile than the passenger carrying cars—they are earning 26 cents on the average as against 21 cents on page 12, and if you eliminate

the exceptions for the years 1941 and 1942, the average picture or normal picture for a passenger carrying car is around 16 cents a mile as against around 26 cents a mile for the head end cars. Of course, while the purpose of this case is not — improve the relation between the two kinds of cars carried in the same train, there is a corollary benefit that the two would be brought closer together, just as any improvement in passenger revenues as a whole will improve the relation between passenger and freight rate ratios.

Examiner Stiles: This is cents per car mile?

The Witness: Cents per car mile.

Examiner Stiles: On pages 12 and 131

[fol. 2574] The Witness: On pages 12 and 13.

Examiner Stiles: And you just took 1936 as 100 in your index list and related the others to that?

The Witness: That is right.

#### By Mr. Oliver:

Q. In the title at the top of page 13 after (109), the word "miles" should be "milk", should it not?

A. Yes, sir; that is war time stenography.

Q. Proceed.

A. Page 14 shows the revenue per passenger mile in cents earned in coaches; that excludes commutation.

Examiner Oliver: Is that line 12 a total or is it an average?

The Witness: It is the average for the total of the seven roads. That compares with the 1.65 fare used by some roads and 2.2 fare used by other roads, resulting in these average figures, and, of course, it is weighted, I shall say, by round-trip and any other conditions that enter into the picture.

## By Mr. Oliver:

Q. Does empty mileage enter into it?

A. No, this is per passenger travelling one mile.

Page 15 gives a similar comparison for the revenue per passenger mile in parlor and sleeping cars, showing the result of a check of the situation in those cars.

Examiner Stiles: Those are system figures?

The Witness! Those are system figures for each of the [fol. 2575] individual roads. I might say that there is no

way of separating them so far as I know between state and interstate, between interstate and intrastate.

Now, page 16 gives the revenue per coach mile, and page 17 gives the revenue per sleeping and parlor car mile. All of these statistics/are—

Examiner Stiles: That is the revenue only from the

sleeping and parlor car services.

The Witness. That does not include what is paid for the berth; it is the fare for travelling in the sleeping car instead of a coach, the increased fare. The figure does not include anything paid for the berth.

## By Mr. Oliver:

Q. In other words, it is the railroad fare and not the Pullman fare?

A. It is the railroad fare and it is not the Pullman fare; it is the revenue realized by the railroad from travel in Pullman cars.

On page 18, I show the total railway tax accruals for the years I am considering; I have used 1936 as index No. 100, and show the sharp increases in taxes going up to an increase of 394 per cent in the year 1942.

On page 19, this comparison with respect to taxes is-

Examiner Stiles: Might I ask you before you leave page 18—In connection with that sharp increase, is that in part-because taxes were based on revenue?

[fol. 2576] The Witnes: It is the taxes actually paid and it is income and excessive income taxation that is partly responsible, largely responsible for it.

On page 19, I make the same comparison, but restrict it to that portion of taxes which is ascribed to passenger under rules prescribed by the Interstate Commerce Commission, showing that the ratio of increase is not as great.

On page 20, I show the ratio of increase-

Examiner Stiles: You said this shows the ratio of increase is not as great on the passenger as on the previous, which included all operations?

The Witness: Yes, sir, that is correct.

Examiner Stiles: What significance do you attach to that in relation to this case?

The Witness: The fact that the rules of the Interstate Commerce Commission for separating these taxes, rely

8

upon the relation of their separation of freight and passenger, and freight gets the lion's share.

Mr. Oliver: The lion's burden it would be instead,

wouldn't it?

The Witness: Yes, sir, the lion's burden. In other words, another method of making the separation might

show a different picture.

On page 20, I show the increase in hourly compensation of all employees. This takes all employees—those em-[fol. 2577] ployees on a daily basis are reduced to hours by multiplying by 8 and dividing the total number of hours so obtained into the total amount of compensation to show the over-all picture. Taking 1936, as 100, we find 1942 standing at 346.

On page 21, I offer a similar comparison with respect to increasing cost of materials and supplies, including fuel,—using October 1, 1936, as Index No. 100: on December 1, 1942, there was an increase of 28 per cent in the class of

materials and supplies, including fuel:

Now, in the ensuing pages, I take up a series of comparisons to help us to understand the statistical picture of passenger miles per train mile or per car mile. The rules of the Interstate Commerce Commission require a separation of freight car miles as between loaded and empty. No separation is made of passenger car miles between deadheaded empty and open to the public for travel. The statistics reveal an enormous amount of deadheaded passenger equipment.

Examiner Stiles: The miles of empty passenger equip-

ment are not reflected in this?

The Witness: The miles of empty passenger equipment are reflected in this, but are not separated, so that we have—

Examiner Stiles: Let me see if I understand you. Just a minute. You arrive at revenue passenger mile per train mile?

The Witness: Yes.

[fol. 2578] Examiner Stiles: In arriving at that, did you use empty car miles?

The Witness: They are included in the divisor and that is one reason why we show such a low number of passengers per train, ranging from 52 in 1916 to 81 in 1918. I have taken these years of World War No. 1 to show the

I am explaining that you have this two-fold situation—one is that the statistics represent the balance between passengers travelling in cars open to the public and cars that carry no passengers because they are being transported deadhead for use in moving troops and so forth. The figures help us in two ways: either the movement of deadhead equipment is more serious than some of us think, or the overcrowding is less serious than some of us think. Now, no one will deny that on certain days there is a rush on the transportation facilities that overcrowd trains. There is also a rush on the better trains that overcrowds those particular trains, but by and large, taking the picture as a whole, the statistics lead us to infer that the day by day overcrowding is not as black as it is painted.

Now, on this page 22, for the average of the five years 1916 through 1920, the average train carried 68 passengers.

On page 23, from 1921 through 1930, it had jumped to 50 passengers per train.

[fol. 2579] Page 24, from 1931 through 1940, shows a further shrinkage to 39 passengers per train, and then if you take 1921 through 1940, in round figures, it will be 46; 1916 through 1940, it will be 51.

Now, take the year 1941 alone, on page 24, line 15, it rises to 63 passengers per train, and in 1942, to 120 pas-

sengers per train, in round figures.

Mr. Marks: Do you take into consideration the length of the train?

The Witness: I am going to give you a comparison per car later on. These are per train, and, naturally, a train is a train, and no consideration is given to the length of one train compared with another.

Mr. Marks: Isn't it a fact there are trains much longer now than in the so-called normal period?

The Witness: Yes, we are carrying more cars to the train, but to check that picture, I put this on a per car mile basis beginning on May 26, and during the first—

Examiner Stiles: Were you going to say anything about page 25?

The Witness: No, because that merely supports the figures for 1941 and 1942 that I gave on page 24. It is true that in addition to the showing that I have mentioned on page 25, I also show the results from January to April,

1943, showing that this increase is still going on in pas-

sengers per train.

[fol. 2580] Beginning with page 26, I put them on a passenger per car basis. In the five years ended with 1920, we had 18 passengers per car; there were no standees in those cars.

On page 27, for the period ended 1930, ten years, that decade that ended in 1930, we show——

Mr. Holifield: In 1920, do you mean that you average 18 to the car?

The Witness: That is right.

Mr. Oliver: 1916 to 1920.

The Witness: And in the decade ending with 1930, there were only 12 to the car; and in the decade ended with 1931, there were ten to the car; and in 1941, there were 15 to the car; and in 1942, 23 to the car.

Page 29 will show that in the first four months of 1943,

there were 29 to the car."

Now, as I have said, these petitions are furnished for the purpose of showing the effect of two different things—the deadheading of empty passenger equipment which dilutes the passengers per train mile or per car mile, and the actual increase in passenger traveling.

Examiner Stiles: When you arrive at these average passengers per car, that is based on coaches and Pullmans?

The Witness: Yes, sir.

Examiner Stiles: And observation cars?

The Witness: Ending with page 29, that is the fact.

[fol. 2581] Examiner Stiles: Are dining cars figured in there?

The Witness: Yes, sir, all passenger carrying cars are figured in that: it is the space for passengers made available for their use.

Examiner Stiles: But you don't transport passengers in dining cars—that is, they are not assigned seats there?

The Witness: No, but they occupy seats there?

Examiner Stiles: So every time you figure the dining car in on the train, you really get a lower number of passengers per car than there actually are of passengers in ears where needed.

The Witness: That dilutes the number of passengers per car. I am trying to have these things thoroughly understood because they are so often misunderstood.

Page 30 limits the comparison to the coaches only. That clears up what has just been mentioned, and that shows a range from as low as twelve passengers per coach in 1938 to as high as 31 passengers per coach in 1942, with an average of 19.

Examiner Stiles: As high as 31?

The Witness: The lowest is 12 in 1938 and the highest is 30.85, or 31, in found figures, in line 12 in 1942.

Examiner Stiles: But you are taking the low figure for

an individual road?

The Witness: No, 12.33 in line 12 in 1938.

[fol. 2582] Examiner Stiles: I see.

The Witness: I am just giving the range of experience there. Again, these figures are diluted by any coaches dead-pheaded empty—the mileage of those coaches not being available.

Examiner Stiles: On page 29, that increase might be partly due, in fact, might it not, to the fact that the companies are now selling seats in the observation cars and club cars? That would help to bring the number up, wouldn't it?

The Witness: Yes, sir, it would obviate the same passenger using two seats; you would have two passengers for the two seats.

Examiner Stiles: Now, on page 30, no dining cars are reflected there?

The Witness: This is coaches alone. .

Examiner Stiles: Although the coach passengers use the dining cars the same as the Pullman car passengers?

The Witness: Yes, sir. I am trying to give the full meaning of these statistics because they seem to be much misunderstood.

On page 31, I give a similar comparison for sleeping and parlor cars, where the low average would be 9, in round figures; take line 12, that would be 1937 through 1940, averaging 9 passengers to the Pullman car, and in 1941, it [fol. 2583] jumps up to 11, and in 1942 to 18.

Now, that is the final page of the exhibit. That includes Pullman cars deadheaded. That completes my testimony except I wish to say this, that my testimony is directed to showing the facts and extent of loss in revenue or unrealized revenue by reason of the Kentucky fares not being in step with the interstate fares, and that that loss is in

face of a chronic need for additional revenue by the rail-roads where a fare period is taken for comparison.

The balance of the exhibit is for the sake of rounding out the relation between freight and passenger service, showing that passenger carrying cars are more responsible for passenger deficits and baggage, mail, express and milk cars, and that passenger operating and income ratios shows a definite burden of passenger upon freight traffic.

Mr. Oliver: You may cross examine.

Examiner Stiles: This page 31, sleeping and parlor cars, that does not include the dining cars?

The Witness: No, sir.

Mr. Oliver: You may cross examine. That's all for this witness on direct. I would like to offer Exhibit 6 which has been identified by the witness Tassin.

Examiner Stiles: Exhibit No. 6 is received in evidence.

(Exhibit 6, Witness Tassin, received in evidence.)

Examiner Stiles: You may cross examine.

[fol. 2584] Cross-examination.

## By Mr. Marks:

Q. Mr. Tassin, please refer to page 3 of your exhibit. As I understand, you have estimated that you would have received \$526,200 revenue in 1943, if you had had the fares that you are seeking in lieu of those that you now have?

A. That is on the basis of a year ended with June 30,

1943.

- Q. Now, if you had received that much additional revenue, would it have found its way into your net income account?
  - A. Not all of it; lots of it sticks by the way.
- Q. How much of it do you think would find its way into the net income account?

A. Offhand, probably 20 per cent.

Q. In other words, in order for the railroads to get \$1, it is necessary for them to charge travelers in Kentucky \$5

under present conditions?

A. Well, I can't answer that question that way. The railroads are entitled to and should prescribe reasonable fares. Now, what becomes of the money received from reasonable fares is another question.

Examiner Stiles: I don't understand your answer—that only 20 per cent probably of this half million dollars shown on page 3 would show up as net revenue.

The Witness: Because this would all come in the very

heavy brackets of taxable income-

Mr. Oliver: You didn't say net revenue. He said net income.

[fol. 2585] The Witness: Oh, as your net income.

Mr. Oliver: You said net revenue, didn't you, Mr. Examiner!

Examiner Stiles: Yes, sir, and that was the point.

The Witness: We would receive 100 per cent of the gross.

#### By. Mr. Marks:

- Q. It would find its way into the net railway operating income?
  - A. Yes, sir.

Q. But only 20 per cent of it-

A. I am using that figure offhand; it will vary for varying roads.

Q. Who would get most of that 80 per cent?

A. The United States Government; it would go towards winning the war. Somebody has got to raise the money to fight this war.

Q. Does the U. S. Government designate the railroad as

a tax collecting agency?

- A. Not only the United States Government, but the 48 states as well use the railroads as a good medium for collecting taxes.
  - Q. How about Kentucky?

A. Kentucky included.

Q. Have the Kentucky taxes increased materially in the last few years?

A. I haven't got the comparative figures in front of me for the state of Kentucky separated; they are available, of [fol. 2586] course.

## By Mr. Holifield:

Q. Don't you know that as the Federal revenue increases that the Kentucky revenue decreases?

A. I don't doubt that. I think the state would like a better division of the burden of taxation as a whole.

Q. In that you are allowed to take out Federal revenue

before you pay any taxes to Kentucky?

A. We are allowed to take out State taxes before we pay any taxes to the Government, but that whole question of taxes, as I see it, the question, as I see it, is a question of revenue from reasonable tariff, but what becomes of that revenue is apart from this proceeding.

Q. We are talking about deadheaded passenger cars?

A. Yes, sir.

Q. Is most of that deaded passenger car business for the accommodation of the military at the present time?

A. At the present time, yes, but even in normal times we have a certain amount of deadheading in connection with the American custom of conventions and baseball games and football games, and when one university is to play with another, we have to furnish a certain amount of equipment to take care of the crowd, so there is a certain amount of deadheading at all times of passenger equipment, but that is increased in war/time.

Q. That is generally interstate?

[fol. 2587] A. In some cases, it is intrastate. I am from Louisiana, and, for instance, when New Orleans plays Baton Rouge, that is an intrastate proposition.

Q. But there is very little of that in Kentucky though?

A. Well, I don't know about that.

## By Mr. Marks:

Q. On page 4 of your exhibit, I believe that exhibit shows that taking the respondents as a whole, they are paying.

their way in 1942 on their passenger traffic?

A: Apparently, but they are depleting their properties by intensive use, and how much money they will have to spend to rehabilitate their properties after this spree, I can't say. This prosperity is in a measure purely false prosperity.

Q. Have you any figures showing the trend for 1943

similar to those shown on page 4.?

A. The only 1943 figures I have in here, as I recall it, back on page 25, the first four months in 1943 are included there, and also on page 29, and only on those two pages, but that is enough to enable me to admit, which I would on the basis of my general knowledge anyway, that 1943 is showing an increase over 1942 up to the present time.

Q. In other words, it would show up better for the railroads?

A. Yes, sir.

Q. Now, on page 5, I believe we reached the conclusion that that is your book value figure under the heading of investment in railway property used in transportation service?

[fol. 2588] A. Yes, sir, as reported to the Interstate

Commerce Commission.

Q. I notice that you have a reference mark, a small letter "a" showing allowance for working capital. Could you give us an explanation of how you arrived at that allowance and approximate relationship to the total investment?

A. The allowance is the amount of cash and material and supplies on hand which is a reported figure to the Interstate Commerce, Commission in the balance sheet account at the close of each year. That is included along with the figures reported in schedule 211-N.

Q. Just for my own information, I was just wondering if you could point out in your annual report the lines on which those figures appeared that you used for the

CNO&TP for the year 1942?

A. It is schedule 211-N, and it is on page 207, and it shows—

Examiner Stiles: Is that the same form that the Interstate Commerce Commission uses that you are referring to right now?

The Witness: Yes, sir, the ICC is also reported to the

State and the State statistics are in the back.

Examiner Stiles: It is the same page you are referring

to, it will appear in the ICC report.

The Witness: It is the same schedule reference and I think that it would be the same page, Mr. Examiner, but I am not sure about that.

The figure appearing on line No. 49 on page 207, columns [fol. 2589] (c) and (e) \$182,891,450, plus the account 708 (cash) appearing in line 32 in column (c) \$5,200,176, and in that same column on line 30, materials and supplies, \$1,211,813.

#### By Mr. Marks:

Q. That cash and materials is shown on page 200?

A. They are added to that.

Q. In addition to that? A. Yes, sir.

Examiner Stiles: What does "that" refer to? It wil mean nothing on the record unless you state what it is.

The Witness: Investment in real property used in trans-

portation service recorded in Schedule 211-N.

## By Mr. Marks:

Q. How do you account for your \$83,000,000 investment in railway property, etc., shown on 207, compared with

\$59,000,000 shown as the book value?

A. The figure of \$58,979,920 appearing in column (c) of line 11 is brought forward to line 3 in Schedule 211-N, and is the property owned by the CNO&TP Railway from which is subtracted the property not used by the CNO&TP Railway, but leased to someone else to operate and to which is added the property of the Cincinnati Southern, that is leased by the CNO&TP Railway.

Q. What is that Cincinnati Southern Railway?

A. That is the line of road from Cincinnati to Chattanooga owned by the City of Cincinnati, and leased to the [fol. 2590] Cincinnati, New Orleans and Texas Pacific Railway.

Q. But isn't that the whole CNO&TP. Railway!

A. It is the line of road, but the CNO&TP owns, in its own rights, the equipment, and owns certain shops and other properties in its own rights.

Mr. Oliver: Now, you were reading from figures from the annual report for the year 1942 to the State of Kentucky?

The Witness: Yes, sir, and the figures were system figures and not Kentucky figures.

## By Mr. Marks:

Q. Now, I believe the figures on page 6 shown as investment in railway property are likewise the so-called book value rather than reproduction value?

A. Let's not say book value; let's say book investment

or book cost.

Q. Is that the book investment on page 61\_

A. Yes, sir, that is the book investment on page 6; not only in owned property, but likewise in leased property.

Q. Property used in transportation?

A. Property used in transportation service irrespective of the year.

Q. And I believe we agreed that either through Mr. Miller or through you that we would break this down into yearly periods?

A. I have permission to break that down and with due respect to Mr. Miller, I will break them down.

[fol. 2591] Mr. Miller: That is all right.

The Witness: Not that I distrust his figures in any way, but I have that information in my office.

By Mr. Marks:

Q. And that will break down the cash and materials and supplies?

A. I can show those figures separately if you desire them shown separately. I might say for the record that these figures are used by the Bureau of Railway Economics in all of these published statistics and that we are all more or less familiar with this base of measuring operating results of the railroads. All of those statistics provide figures to show the return by the railroads.

Q. You would show your rate of return for each year for the Respondent roads, as I understand it?

A. I will be glad to do that.

Q. Will you super-impose upon that your corresponding figures for the first half of the year 1943?

A. We can't give them to you for a half a year. These figures are not completed as soon as the year has closed; as a matter of fact, the 1943 figures will not be available until about June, 1944.

Q. How do you arrive at the rate of return then?

A. We use the investment at the beginning of the year for that purpose.

Q. That is in connection with your monthly statement! [fol. 2592] A. Yes, sir, they use the figure at the beginning of the year because they can't revise it until the changes during the year are available.

Examiner Stiles: You have asked him to furnish and he said he was going to furnish an additional item to that which was covered by permission previously granted—is that true?

The Witness: He asked me to make a certain separation of the details of the figures that I am going to furnish. He asked me to show it in greater detail.

## By Mr. Marks:

Q. Let's take page 6:

A. All right, take page 6; that is an average figure, and he wants me to give him that figure for each individual year and at the same time take out of that the amount of cash and materials and supplies included in that.

Q. Putting all three in one heading?

A. Yes, sir.

Mr. Oliver: And he wants the showing of the rate of return.

The Witness: Yes, sir, which will necessitate my putting in the net railway operating income and carrying it to show the rate of return as indicated on that basis.

Examiner Stiles: Permission is granted to show the

statement in that form.

### By Mr. Marks:

Q. On page 5, you show taxes being deducted before arriving at your net railway operating income. Do those [fol. 2593] taxes include your Federal income taxes?

A. They do.

Q. Now, I notice an increase in taxes in 1942 over 1941 for the Southern Region carriers of approximately \$118,-000,000. In other words, your tax item has increased approximately 150 per cent. Would you say that by far the largest part of that increase is Federal income taxes?

A. What page are you looking at?

Q. Page 5.

A. Page 51

Q. Yes, sir:

Mr. Oliver: 1942, as against 1941?

The Witness: Oh, I see. This column of taxes that appears on here. Are you looking at 1942 as compared with 1941?

Mr. Marks: Yes.

The Witness: Yes, sir.

### By Mr. Marks:

Q. But notwithstanding, you were able to take care of all of your increased Federal income taxes, '42 over '41, and you nevertheless increase your rate of return from 4.24 to 6.41?

A. Yes, sir. As I-

Q. Have you given any consideration to what your rate of return would have been if you had not deducted your

Federal income taxes before computing it?

A. No, because that would be improper. Now, in com-[fol. 2594] parison with that figure of 6.41 to which you called my attention, please look on line 20, 0.78 in year 1932. We can't consider 1942 without also remembering 1932.

Q: But you are proposing increases in your fares when they will do you the least good?

A. Now, we are straightening out a situation that needs straightening out when conditions permit us to do it.

- Q. Please refer to page 13. I understood you to say that one of your purposes in proposing the increase would be to improve the relationship of the income from your passenger cars in your train compared to your so-called head end ears?
- A. No, I didn't say that that was one of the purposes. That is not a purpose, but it is an indirect benefit. I am avoiding that word.
  - Q. It is a desirable thing to accomplish?
  - A. Yes, put it that way.
- Q. In 1942, your head end cars were producing 28½ cents per car mile, whereas your passenger cars were producing 38½ cents per car mile?
  - A. That is right.
- Q. If you increased the income from your passenger cars, wouldn't you throw this further out of line than they are today?
- A. Not in a proper period basis. Again, we can't consider individual years in and of themselves, but must have [fol. 2595] good and bad alike, the fat and the lean.

Examiner Stiles: In other words, the figures in the average column are of greater significance than the figure in the 1942 column?

The Witness: It is, it is.

## By Mr. Marks:

Q. Well, couldn't you have changed your average by

going back even farther than you did?

A. I would have had I had the information as to the separation as between passenger and freight, had that permitted me to do it. I already cover the entire period between wars 1021 to 1940, inclusive, and if that does not give us a fair average picture, I do not know what will.

Examiner Stiles: Are these the same years on pages 12 and 13 that you used in the Alabama case?

The Witness: They are.

Mr. Marks: I think that is all.

Examiner Stiles: Any further questions?

Mr. Holifield: No questions.

Mr. Miller: I have some questions, if you please.

## By Mr. Miller:

Q. Could you explain briefly how you obtain the figures on page 3 with respect to those lines for which you are responsible?

A. Yes. From month to month, we accrue the separation of between intrastate and the state allocation of interstate revenue for the various states. That is done from month [fel. 2596] to month, regardless of any case, and was available before this action was brought. Now, because all of the intrastate was not subject to the increases here at issue, for example, the Federal travel, we made a test of the relation of the intrastate revenue that should be excluded and arrived at the amount that would be subject to the increase

if the intrastate fares were put on the same basis as the interstate.

Q. Then I understand that you regularly do something on the order of counting tickets, or something of that sort, is that correct?

A. We did before 1936,—we counted every ticket and checked every cash fare, and then it suddenly dawned on us that we were losing more money on counting how much money we lost, and then we stopped that method and shortened the procedure.

Q. How has it been shortened?

A. They cut off quite a few clerks.

Q. What is the procedure?

A. The procedure is to take a representative period and show what the relation is between infrastate and interstate.

Q. In other words, it is what the statisticians call a

sampling procedure?

A. A sampling procedure is kept current by making such

changes as are found necessary.

Q. Do you, by any chance, know why the L&N Railroad figure is so much larger than the others? [fol. 2597] A. It is because they do so much more business in Kentucky han the rest of us do.

Examiner Stiles: You would properly call this an esti-

mated loss?

The Witness: Yes, sir-it is an approximated loss; it is more carefully made than an estimate usually is; it is the best approximation we can arrive at by competent statistical methods.

# By Mr. Miller:

Q. On page 4 of your exhibit, you set forth net railway operating income, or deficit, passenger,—that is the passenger income or deficit?

A. Yes.

Q. Is there any revenue from freight included in there at all?

A. No. sir.

Q. In making any of these calculations in this exhibit, have you given any consideration to the recognition by the Interstate Commerce Commission that freight revenue should, to a certain extent, force these passenger deficits?

A. I have testified that they don't.

Q. You have not included them?

A. No, these figures are bodily taken from the reports. of these various carriers on file with the Interstate Commerce Commission: They can be checked with the reports on file at the Interstate Commerce Commission,

[fol. 2598] Q. Now, turn to page 5. In answer to a question from Mr. Marks, you stated that it would be improper to figure rate of return prior to deduction of Federal income tax from your railway operating income. Just before I ask you the question, I would like to refer to a statement. in the first report of the Interstate Commerce Commission in Ex Parte 148, in which they quoted from a prior decision wherein they said,

"Railway corporations should, like other corporations, pay their Federal income taxes out of income, rather than collect it, in effect, from the public, in the form of transportation charges adjusted to enable them to retain the designated fair return over and above the taxes."

In the light of that statement of the Commission, why did you say that it is improper to do that?

A. The Commission made that statement?

Q. Yes, sir, and I could give you the page if you want it.

Examiner Stiles: Didn't they there say that the 5% per cent with tax deducted was equivalent to 6 per cent with the tax in?

The Witness: If the recognized rate of return was high enough, I would have no objection to it, and that is the way I intended to answer your question.

Examiner Stiles: I think the 5% per cent is based on the

Federal income taxes being out.

The Witness: It is the prescribed method.

[fol. 2599] By Mr. Miller:

Q. Now, Mr. Tassin, I am not familiar with these new report forms, and never had a great deal to do with it. Do I understand that account 211-N?

A. That is a schedule.

Q. It includes cash and materials and supplies?

A. It does not.

Q. That is just to clear up myself. The Federal income taxes are not distinguishable from the other taxes on page 5 of your exhibit or elsewhere in your exhibit?

A. No, but they are distinguishable in the reports of

the Interstate Commerce Commission,

Examiner Stiles: So it is impossible to determine from your exhibit what your rate of return would be prior to payment of Federal income taxes?

The Witness: No. . If we are going to exclude Federal income taxes, why not also exclude State taxes? You have a lot of vexatious questions to answer if you attempt to break those figures down for purely theoretical reasons.

Examiner Stiles: Your rate of return or the rate that you claim that you should get is not a purely theoretical matter?

The Witness: No, and it is not sufficient to justify making these separations, and they are not making enough money over a representative period—

Examiner Stiles: It is just a question of determining

what you actually had made.

[fol. 2600] The Witness: Those computations could be made by separating the amount of income taxes included in that column, and then computing the return by excluding them and including them—you have a comparison both ways.

Examiner Stiles: And the rate of return would be mate-

rially higher especially in the last two years?

The Witness: In proportion to the increase in income taxes?

Examiner Stiles: Proceed, Mr. Miller.

#### By Mr. Miller:

Q. On page 7, I think there is a small matter that should be cleared up for this record. You have listed the mileages of the seven lines operating in Kentucky. Now, there are other railroads that are not parties to the petition in this case, as for example, the Baltimore & Ohio. My understanding is that the other railroad lines, that is, those other than these seven operate a very small number of miles in the state of Kentucky,—namely, less than about seven miles.

Mr. Oliver: You have used the terus petitioners—these are the seven petitioners. If you will qualify it to read the respondents, I think you will get it correctly. The B&O is a respondent, but not a petitioner.

### By Mr. Miller:

Q. The other respondents operate a very small number of miles of railroad in Kentucky?

A. Yes, sir.

[fol. 2601] Q. The most that any of the others operate is about seven miles, isn't it?

A. I think so; the Pennsylvania operates a very short mileage.

Q. And so does the B&O?

A. Nes.

Q. And there are only five lines in the state of Kentucky that operate more than 100 miles?

- A. I wouldn't say that if you include classes 2 and 3; I don't know the mileage of some of these class 2 and 3 roads.
  - Q. It is the class 1 railroads?
  - A. It is the class 1 railroads.
- Q. Now, on page 9 of your exhibit, you give a reproduction estimate—I believe that is to show the conservativeness of your basis for calculating rate of return, is that correct?
  - A. That is right.
- Q. You have recognized in that reproduction estimate the increase in values which are occurring—I mean the increase in costs that are occurring that would result in a higher reproduction cost than the original cost?
- A. These figures are the 1940 figures and are the Commission's estimate of the amount of investment that would be prudently required, or that would have been prudently required to produce these carriers in 1940,—the amount of money that would have had to have been raised.
- Q. Could you refer to the report or the document where [fol. 2602] the Commission made this estimate?
- A. The source is shown in line 16 of page 9 of my Exhibit No. 6; it is taken from Exhibit A-11 introduced in Ex Parte 148.
  - Q. That would be a statement of the Commission?
- A. Of the Bureau of Valuation of the Interstate Commerce Commission.
  - Q. But that was the Bureau of Valuation's estimate!
  - A. Yes, sir.
- Q. Didn't they as of the same date set forth their own estimate of what should be the value upon which fair returns should be calculated?
- A. It didn't get into the record. Commissioner Aitchison excluded any reference to the statement to which you refer.
- Q. Turn to page 14. The revenue per passenger mile in coaches during 1942 was at that the approximately the present Kentucky intrastate rates?
- A. Yes, sir, very little influenced by the 2.2 rate that several roads had.
- Q. Now, then, on page 10, you show an operating ratio for those same lines for the same year of 74 per cent for 1942. If that rate would return that ratio, why is it not a reasonable rate?

A. The rate returns the ratio because of the number of people who paid the fare. It doesn't mean that the fare [fol. 2603] was just, whether one pays it or ten.

Q. In other words, you believe the fairness of the rate has no relationship to the economic conditions which give

rise to differences in travel, is that right?

A. Our tariffs are not equipped with thermostats to make them rise and fall from month to month in accordance with the rise and fall of the volume of traffic. They must be based on a proper period consideration.

Q. On page 30 of your exhibit, why didn't you include

any of 1943 in those calculations?

A. On page 30?

Q. Yes.

A. Well, I worked on a full year basis, that is the only reason. I had admitted frankly and freely that 1943 shows an increase in volume over 1942.

Q. But in some of the other exhibits you include the first

three months of 1943?

A. That is true and it could have been done in the cases with more work, but those figures during that current year are not always readily available, especially when you are dealing with several roads they are not so easily obtainable. We prefer to work on a full year to the extent that we can

Mr. Miller: That's all the questions that I have.

Mr. Johnson: May I ask a question of him?

Examiner Stiles: Yes, sir.

[fol. 2604] Mr. Johnson: You are familiar with the fact that in 1933 to November 15, 1937, there was a 1½ cent fare for intrastate passenger rates in Kentucky?

Mr. Oliver: Mr. Examiner, I would like to inquire whom this gentleman is representing? I didn't get his oral ap-

pearance this morning.

Mr. Johnson: I represent myself, and other car riders in Kentucky who have asked me to appear here.

Examiner Stiles: If you have not been admitted to practice before the Commission, you would not be authorized to represent other persons here but as I understood from your written appearance, you represent yourself as a carrider, and as such, you may question the witness.

Mr. Johnson: Read the question, please.

(Question read.)

The Witness: I don't carry those dates in my own mind; Mr. Aiken testified to the situation here this morning, and I heard his testimony.

### By Mr. Johnson:

Q. It was a fact, was it not, then that for practically five years ending November 15, 1937, there was a 1½ cent passenger rate in force in Kentucky?

A. If Mr. Aiken said so, it is a fact.

Q. And then for another 14 months following November 15, 1937, the carriers asked for an increase in that rate to 2 cents and it was granted, and for 14 months then they had [fol. 2605] a 2 cent rate?

A. I assume that those periods are correct as you are stating them; I am familiar with the rates and fares.

Q. And after that rate had been in operation for fourteen months, dating from January 15, 1939, to the present date, there is a basic rate of 1.5 cents, which was increased 10 per cent at one time, which made it 1.65?

A. It was 1.65.

Q. And that period was approximately five years?

A. I don't carry those periods in my mind.

Q. Assuming that to be a fact, and I think that the record shows that, there were practically five years of operation at the low rate and then fourteen months, or practically the year 1938 at the higher rate of 2 cents, and then the road went back to the lower rate for another five years. Now, assuming those to be the facts for the purpose of this question—if you will turn to page 5 of your exhibit, isn't it a fact that your total operating revenues in 1938 when the change was made to the higher rate decreased?

A. Well, that decrease could be due to a great many

causes.

Q. I appreciate that, but I am just asking you if it is not a fact, however, that they did decrease for the year 1938?

A. There was a decrease in the year 1938, compared to

1937, yes.

Q. And, therefore, that 1938, the year with the higher rate [fol. 2606] in effect, stands out as a drop in total operating revenues as compared with the previous five years and the subsequent five years?

A. The connection between the two is not apparent to me.

Q. Isn't it also a fact that the operating expenses decreased that year, in 1938, too?

A. Yes, there was likewise a decrease in operating expenses.

Q. And that the rate of return for that year was a deficit,

1938 showed a deficit?

A. No, that "D" applies to net income; there was a deficit in the net income column, but a return of 1.9 per cent.

Q. And the net income decreased that year?

A. Yes, sir.

Q. Then please turn to page 7?.

A. All right.

Q. The rate of return in Kentucky has been higher than over the entire lines, isn't that right?

A. The weighted return for Kentucky is higher than the

weighted return for the seven roads as a whole.

Q. Now, then, to page 24 and 25, Mr. Tassin,—did not those two pages show that for the five years prior to 1938, the trend was upward and then it decreased in 1938, and then when the *increased* rates went into effect again in the beginning of 1939 and continued for another five years that the trend was upward again?

[fol. 2607.] A. The statement shows an upward trend after

1938; 1938 was a depressed year.

Q. It was a dip?

A. Yes, sir.

Q. If dipped down into 1938 from the five preceding years,

as well as the five succeeding years?

A. No, 1938 is more than 1935 or 1934; you said something about the five preceding years; 1938 is higher than any year except '36 and '37.

Q. For the preceding two years, then, it certainly was

dipped!

A. Yes, sir.

Q. And then for the succeeding five years it represents a dip from those two?

A. Only the two succeeding years are better and not five.

Q. On the following page, don't you show the same thing for '41 and '42?

A. If you include '41 and '42, yes, but that would make it four years and not five.

Q. Now, turn to page 30. Doesn't your exhibit on page 30 show that the passenger miles per car mile for 1938 when the rates were increased were lower than they were in the two preceding years of '36 and '371'

A. It is lower than the preceding year, '37; this page 30 deals with coach miles only.

Q. Yes, I appreciate that,' The 1938 then was lower than

"[fol, 2698] it was for 1936 and 1937?

A. Lower than for 1937, but we haven't got that figure for 1936.

Q. Doesn't the figure show 10.9 for 1936, -page 28?

- A. But page 28 is per car mile; all passenger carrying car miles and not coach miles; coach miles statistics were not available for 1936 and that is why they were not shown on this statement.
  - Q. That includes all of the cars?

A. Yes, sir.

Q. Then, for all the cars, it shows there was a dip in 1938 as compared with 1936 and 1937?

A. You will have to turn back to page 28.

Q. Why?

- A. Because the coach is only one kind of a car in several kinds of passenger cars.
- Q. I am now trying to direct your attention to page 30, passenger mile per coach mile. It is a fact that 1938 represents quite a dip from the figures for 1937?

A. We lost three passengers a car.

Q. You lost three passengers?

A. Yes, sir.

Q. And when the rates were decreased again beginning in 1939 to the present time, the passenger miles per coach mile increased to the point—

[fol. 2609] Yes, sir.

Q.—to the point where in 1942 they increased from 12.33 per coach to 30.85

A. Yes, sir, or from 12 to 31, or increased by 19 passengers.

- Q. And all of these differences which we have just discussed apply to that one year 1938 as compared with the preceding period and the succeeding period when lower rates were in effect than in 1938?
- A. Yes, sir, but there is not a relation there between cause and effect.

Q. That, of course, is your opinion?

A. It is my knowledge; I know the consist of these statistics.

Q. Would you undertake to say that the railroads were wrong in their reasoning when in 1938 they asked the Interstate Commerce Commission to permit them to increase the rates, and then in 1939 when they found a falling off of revenue they asked the Interstate Commerce Commission to approve the decreasing of the rates again in order to recapture some of the business that they had previously lost?

Mr. Oliver: Let's keep the record straight. There was no request on the part of the railroad to the Interstate Commerce Commission in 1938 to increase their rate to 2 cents a mile. In 1936, the Interstate Commerce Commission reduced the rate from 3.6 to 2 cents a mile, and fixed that as the maximum rate. Later on, the railroads, without any [fol. 2610] further authority from the Interstate Commerce Commission increased their rates to 2 cents a mile, which the Commission had found to be a reasonable rate. Now, the phrasing of the question just leaves a confusion in the record here that I think should not be permitted by that sort of a question.

# · By Mr. Johnson:

Q. What, if you know, occasioned the railroads changing the rate from a low to a higher rate after 1938?

A. A traffic man should answer that question.

Q. You would not undertake to say?

A. I wouldn't undertake to say.

Q. And you don't know what occasioned them after operating for that one year on the higher rate to want to

be permitted to put into effect the lower rate?

A. In general, I know; I would say that in general the railroads very closely watch all of the situations and they are always after additional revenue whether that is to be secured by raising or lowering the rates, but a traffic man will have to answer the question in detail for you.

Q. Would you say that the fixing of rates is in any way

determined by a desire to increase or lower traffic?

A. We live off of volume of traffic, and we must have

fares that produce volume.

Q. State whether or not you know that the railroads undertook the statement which the railroads made at that time in justification for reducing the rates was that they [fol. 2611] wanted to recapture some of their lost business that was otherwise travelling in private cars and in busses.

A. In other words, they wanted to protect their volume:

Q. And they, at that time, reduced the rate?

A. Yes, sir, it had that effect.

Q. They did it, didn't they!

A. The passenger traffic witness I think covered that situation; I think those witnesses covered it.

Q. I am not so sure that they did.

A. A statistician operates on a post mortem basis, you see.

Q. You merely look at it after it happens?

A: We see what has happened, and then we draw our lessons from experience.

Q. Would you be able to say from these figures that I have called your attention to that by having increased the rates, that the reduction in their revenue was occasioned by that increase in their rates?

A. What I say is this—what the railroads are after is consistently to protect or increase their revenue and they raise and lower their rates as in either case it may produce their results.

Mr. Johnson: That is all.

Examiner Stiles: Mr. Johnson, did I correctly understand you to say that you have not been admitted to prac-[fol. 2612] tice before the Commission?

Mr. Johnson: I have not been, no, sir.

Examiner Stiles: Then I will ask you to eliminate from your written appearance your appearance for other riders.

Mr. Johnson: I shall be delighted to do so.

Examiner Stiles: Are there any further questions to this witness on cross examination?

#### By Mr. Marks:

Q. Did you hear certain witnesses testify this morning with respect to extraordinary operating expenses during the war period?

A. Yes, sir.

Q. Would all of those expenses be included in your railway operating expenses?

A. Yes, sir.

Mr. Marks: That is all.

Examiner Stiles: Any redirect examination?

Mr. Gray: I have a question that I would like to ask the witness at this time.

#### Redirect examination.

## . By Mr. Gray:

Q. Would you refer to page 28 of your exhibit?

A. Yes, sir.

Q. The record will show from the testimony this morning that the Illinois Central has had the same rate since 1936 through and they did not increase or decrease their rate in 1938. Don't the figures shown on page 28 of your exhibit show a dip in the Illinois Central figures for the year 1938 [fol. 2613] as Mr. Johnson referred to it as a dip?

A. Yes, sir, there is a dip in comparison with 1937, and also the figure is dower than the years 1939 and 1940 on page 28 to which he referred, and in 1941 and 1942 on page 29 to

which he also referred.

Q. Is the same thing true on page 30 of your exhibit?

A. 1938 is less than 1937 and less than 1939, 1940 and 1941, or 1942.

Q. Would that indicate to you as a statistician that the causes of the dip were something other than a rate increase or decrease?

A. Yes, sir, and I so answered Mr. Johnson that he was assuming the relation of cause and effect which did not exist.

Mr. Gray: That's all. Thank you.

Mr. Oliver: I have nothing further.

Examiner Stiles: You are excused.

(Witness excused.)

Mr. Oliver: That completes the case for the Respondents unless the parties on the other side wish to question the accounting witnesses for the other railroads with respect to the showing made for their respective roads on page 3 of the Exhibit 6 introduced by Mr. Tassin.

Examiner Stiles: Does anyone wish to have those ac-

counting witnesses called to the stand?.

[fol. 2614] Mr. Marks: We have no questions to ask the accounting witnesses. Mr. Miller may.

Mr. Miller: No, I don't have any.

Mr. Gray: Do you have any such questions, Mr. Johnson?

Mr. Johnson: No, sir.

Examiner Stiles: Off the record.

(Discussion outside the record.)

Examiner Stiles: On the record.

Mr. Marks: I would like to request, Mr. Examiner, that the protestants be permitted to wait\_until tomorrow to start their testimony at 9:30, providing the C&O Railroad is on time for Washington.

Examiner Stiles: We will adjourn at this time until 9:30

tomorrow morning.

(Whereupon, at 4:16 o'clock p. m., on Wednesday, September 8, 1943, the hearing was recessed until 9:30 a. m. of the following day, Thursday, September 9, 1943.)

[fol. 2615] Hearing Room, Kentucky Railroad Commission, Frankfort, Kentucky, Thursday, September 9, 1943.

Before C. E. Stiles, Examiner.

Appearances: As heretofore noted.

#### PROCEEDINGS :

Examiner Stiles: Let's come to order.

Mr. Oliver: I would like to recall Mr. Tassin for about five minutes.

J. S. Tassin, having previously been sworn, was recalled and testified further as follows:

Direct Examination.

Mr. Oliver: Mr. Examiner, Mr. Tassin thought there might be some little confusion in connection with his discussion of pages 6 and 9 of his Exhibit No. 6, and I would like to give him an opportunity to make a few remarks about those two pages of his exhibit.

#### By Mr. Oliver:

Q. Will you proceed, Mr. Tassin?

A. I requested on yesterday permission to recheck pages 6 and 9 for fear that there might have been some typographical clerical error in the totals appearing on line 16 of page 6, and line 14 of page 9. There is no such clerical [fol. 2616] error. The figures on page 6 or the averages for the years 1921 to 1942 are inclusive, and the figures in the first column under the heading "Investment in railway property used in transportation service, including cash

and materials and supplies" are average figures over the period built up in the way I described to Mr. Marks from the CNO&TP annual report to the state of Kentucky for the year 1942; that is, there are also in the figures reported in Schedule 211-N, plus cash and materials and supplies. I haven't agreed to furnish the detail that supports these averages.

The figures on page 9 are from an entirely different source, being entirely taken from Exhibit 11-A, in Ex Parte 148, and Bureau of Valuation figures. The first column entitled "Basis A production costs" is described in Exhibit A-11, as original cost to date, and it does not include land, and also does not include working capital, which are here shown on a current appraisal basis in separate columns

on page 9.

This "Basis A production cost.", or original costs to date is composed of three different kinds of figures. Take the Southern Railway, for example, on line 13,-49 per cent of that total represents what we call continuous structures, like various structures like bridges and trestle structures that are renewed and replaced on a piecemeal basis and not accounted for on a basis of retirement and replacement. [fol. 2617] That block of property is in this column on the basis of the 1910-14 level of prices, 49 per cent of it. second block is partially in on that basis—the amount accounted for as betterment being on the current costs basis; and the third block is on the retirement renewal basis, and represents the actual cost of property installed subsequent to the valuation date or in place of property 100 per cent retired after that date. So, there are three kinds of figures in that column:

In Column "B"; there are two kinds of figures; while Exhibit A-11 describes those figures as cost of reproduction new, a substantial proportion is cost of reproduction sec-

ond-hand.

Now, take Basis A and Basis B as taken here from Exhibit A-11, to both of those figures are added lands and working capital to produce Basis A and Basis B in the extreme right of the exhibit.

I merely wished to get that clear so that we might have a clear understanding of the natures of these figures compared one with the other, and I will furnish the details supporting the averages on page 6.

Examiner Stiles: Any questions?

Mr. Oliver: Nothing further.

Mr. Holifield: No sir.

Cross-examination.

## By Mr. Marks:

Q. When you say cost of reproduction second-hand, is it [fol. 2618] not meant by that that it is equivalent to the reproduction new less depreciation?

A. It might be.

Q. On page 9, is that the amount that the Commission approved as being a proper basis for working capital rather than the actual amount of cash and materials and supplies on hand as shown on page 6?

A. It is an amount worked out according to a formula devised in the Bureau of Valuation and is less than either cash or materials and supplies, although it is presumed to

cover both or be a fair allowance for both.

Examiner Stiles: You are excused.

(Witness excused.)

J. E. Marks was sworn and testified as follows:

#### Direct examination.

#### By Mr. Holifield:

Q. State you name, age and residence?

A. My name is J. E. Marks, 52 years of age; my address is Lexington, Kentucky

Q. State briefly your experience in traffic and transpor-

tation matters, Mr. Marks?

A. I have had approximately 30 years experience in handling traffic and transportation matters in the employ of railroads and shipper organizations.

Q. Have you had any experience in accountancy? [fol. 2619] A. I am not an accountant by profession, but I have had some experience along that line, for example, upon leaving school in 1907, I accepted employment in a distillery over in Nelson County, and during the seven years that I was there, my duties consisted of being a shipping clerk and bookkeeper for the distillery, and I performed

most of the duties of a local freight agent for the Louisville & Nashville Railroad Company at that point, including

making up accounts currents.

In 1918, I left the employment of the Illinois Central Railroad after three and a half years in the general freight office at Memphis, and accepted employment with the United States Diplomatic Service for the duration of World War No. 1. After being in the State Department at Washington for three years, I was assigned to the Embassy at London and shortly after arriving there, I became assistant accountant in the London Embassy.

After a year or more in this position, I was transferred to the Embassy at Rome as chief accountant and disbursing officer. I held that position for 2½ years. While in Rome, I was sent to Bucharest, Rumania, to audit and revise the accounts of the Legation. I left Rome in November, 1922, five days after Mussolini came into power, and I have been in Lexington, Kentucky, since.

Q. Are you familiar with the issues in this hearing?

A. I think so.

[fol. 2620] Examiner Stiles: You might state for the record your present connection with the Kentucky Railroad Commission.

The Witness: At the present time, I am an attorney at law engaged in private practice, but among other of my clients I am serving as Commerce Counsel and Traffic Adviser for the Kentucky Railroad Commission.

## By Mr. Holifield:

Q. For whom are you appearing in this proceeding?

A. For the Kentucky Railroad Commission.

Q. Have you prepared some exhibits which you desire to offer in support of your testimony!

A. I have.

Q. Were those exhibits prepared by you or under your supervision?

A. They were.

Q. Are they correct to the best of your knowledge and belief?

A. They are.

Q. Please proceed with your testimony, identifying and explaining your exhibits.

Examiner Stiles: Let the first exhibit be identified as No. 7:

(Exhibit 7, Witness Marks, marked for identification.)

The Witness: My first exhibit, No. 7, shows typical illustrations of the present and proposed rail coach fares, one way and round-trip, between points in Kentucky as comfol. 2621] pared with corresponding fares maintained by the Southeastern Greyhound Lines.

For the most part, the one-way and round-trip bus fares for the shorter hauls are the same as the rail fares, being based on 1.65 cents per mile for the one way, and 10 per cent less than that for the round-trip fare. The bus fares decrease somewhat with distance, so it will be found for the somewhat longer hauls, I would say over 100 miles, the bus fares are a little lower than the rail fares. There is some little difference in fares between certain points like Louisville to Elizabethtown, the bus fare being a little higher than the rail, due to the fact that the highway distance is somewhat greater than the railway distance. Also, the reverse is true in other cases, for instance, Lexington to Richmond, the bus fare is 45 cents against a rail fare of 66 cents. due to the shortest distance by highway. I believe these points are representative in Kentucky, and that may be summed up by saying that at the present time the one-way rail fares average about 15 per cent higher than the oneway bus fares, whereas the proposed one-way rail fares average approximately 40 per cent higher. On round-trips the percentages vary slightly, the rail being about 9 per cent higher, and the proposed fares approximately 41 per cent higher.

I think that is all the information necessary for that exhibit.

[fol. 2622] Examiner Stiles: Let the next one be identified as Exhibt No. 8.

(Exhibit 8, Witness Marks, marked for identification.)

The Witness: Stated briefly, Exhibit No. 8 was compiled from reports to the Kentucky Railroad Commission by various carriers in Kentucky, and relates almost entirely to passenger statistics. The various tables are indicated on Sheet 2.

On Sheet 3, I have shown that the Louisville & Nashville Railroad Company, Illinois Central Railroad, the C&O, CNO&TP and Southern Railway have a total mileage in Kentucky of 3,140 miles or something over 96 per cent based on passenger mileage. In other words, there are some sections of these roads over which no passenger service is maintained. On total mileage, however, the per cent is about 96.6 per cent of the seven lines shown on the exhibit.

Examiner Stiles: I note your footnote on that page and I am wondering if your figures above reflect those reductions in mileage.

The Witness: These figures are those of the average of 1942, and I merely mentioned that to show that the mileage is somewhat less in 1942 than it had been in the preceding years due to various abandonments. My principal purpose in submitting this sheet is to show that the figures in the succeeding pages for the five carriers shown in the top group represents substantially all of the Class I mileage in Kentucky.

[fol. 2623] I have not shown any statistics for the GM&O and the NC&StL and Tennessee Central on this exhibit, other than these mileages. Now, it so happens that the Tennessee Central is not a petitioner, so the figures on here come nearer representing the total mileage of the seven petitioners and those shown on this sheet here.

Examiner Stiles: The second block on page 3 embraces the double-track mileage, I take it.

The Witness: I don't understand that to be true, no. In other words, I think that the double-track mileage is merely considered one mile of railroad.

Examiner Stiles: What is the distinction between the first block and the second block?

The Witness: The distinction is this: the Louisville & Nashville Railroad Company, for example, operates a line of railroad between Maysville and Paris, but they do not operate any passenger trains over that section of road.

Now, in Table 2 on Sheet 4, I was able from the report to segregate the strictly Kentucky intrastate passenger revenue of two of the important lines in Kentucky, the L&N Railroad, and the Chesapeake & Ohio. I wasn't able to make that segregation with respect to the other lines. Now, this, however, will give you some idea of how much of

the total passenger revenues credited to Kentucky both intrastate and interstate were strictly intrastate.

[fol. 2624] The L&N Railroad Company for the year 1936 redited to Kentucky both intrastate and interstate \$2,527.960, of which \$733.479 were intrastate.

I understand the figures in Table 3, Sheet 4, were arrived at by the carriers by taking their wholly intrastate passenger revenues and adding to them their interstate fares prorated on a mileage basis. For example, if 40 per cent of their entire mileage was in Kentucky, they would credit to Kentucky 40 per cent of all of their interstate revenue.

Now, in Table 3, I would like to call attention to the fact that there has been a rather severe jump in passenger revenues beginning with 1941, and they particularly have jumped in 1942. After running around the \$4,000,000 mark from 1935 to 1939, it jumped up to \$4,500,000, in round numbers, for 1940, and \$6,500,000 for 1941, and \$14,000,000 in 1942.

Table 4, Sheet 5, is the same data as Table 3, Sheet 4, except that it represents number of passengers carried irrespective of the distance. This likewise has increased in somewhat the same ratio as the passenger revenues. In 1940, it was about \$3,000,000, 1941 about \$4.000,000; and in 1942 about \$6,500,000 for the five roads shown.

Table 5, Sheet 5, is the total passenger miles for these five roads in Kentucky intrastate and interstate traffic. There has been a still greater increase in that due to the fact as will — shown by a later table, that the average [fol. 2625] distance per passenger travelled has increased. For example, in 1935, 220,000,000—because that figure is shown in thousands—passenger miles in Kentucky jumped to 369,000,000 in 1941, and 723,000,000 in 1942.

Table 6, on Sheet 6 shows that increase in average miles per passenger. I have not totaled it, but a mere glance across there shows that there has been a rather consistent increase—the L&N Railroad having jumped from 66 miles per passenger in 1936 to 122 in 1942, showing that rail passengers are travelling a greater distance on the average.

Table 7 shows the average revenue per passenger mile. I will just call attention to the higher revenue in 1938 over those in the preceding and following years, due to the fact that they had the higher fare in effect throughout the year 1938. A slight increase in 1942 over 1941 is no doubt ac-

counted for by the 10 per cent general increase which became effective in February, 1942.

On Table 8, Sheet 7 is the average revenue received by the railroads per passenger. In this table is reflected both the rate and the distance the passenger was carried. 1938 also shows higher in this table.

Now, in Table 9, Sheet 7, I have shown the passenger miles per nale of railroad and the increase is more substantial there because it reflects the longer hauls, the greater amount of passengers travelling, and to some extent the [fol. 2626] fact that the carriers have abandoned some of their mileage in Kentucky.

Table 10, Sheet 8, shows the car miles of passenger coaches in Kentucky, and in Table 11 are shown the car miles of the sleeping and parlor cars. Adding those two together, we have Table 12 on Sheet 9, which shows total car miles, coaches, sleeping cars and parlor cars, and dividing the figures in Table 12 into the total passenger miles in Table 5, we get the average number of passengers per passenger car mile. In other words, in 1935, the Kentucky Railroads hauled an average 8.7 passengers per car mile; in 1940, this had jumped to 10.6; in 1941, it had numped to 13.8, and in 1942, it had jumped to 22.3, which shows approximately three times as many people are travelling on the passenger trains in 1942 against 35.

## By Mr. Holifield:

- Q. Mr. Marks, where did you secure the figures that are included in this exhibit? Where did you secure the figures that are included in this Exhibit No. 8 that you have discussed?
  - A. The one that I just discussed!
  - Q. Yes.
- A. From the reports made by the railroads to the Kentucky Railroad Commission.

Examiner Stiles: Let the next exhibit be identified as No. 9.

(Exhibit 9, Witness Marks, marked for identification.) [fol. 2627]—The Witness: My next exhibit is No. 9 for identification. While my Exhibit No. 8 related to the Kentucky figures only, all of these statistics in Exhibit No. 9 relate to the system figures of the seven petitioning carriers.

These were taken entirely from the Interstate Commerce Commission's statistical statements numbers 41-200, 42-200 and 43-200, except where I have specifically shown otherwise; that is for the years 1938 to 1942, except that the figures for the first six months of 1943 and those for the first six months of 1942 were taken from the Association of American Railroads, June, 1943, monthly reports, Series No. 406.

Sheet 2 is merely the table of contents, and Sheet 3 shows system mileages for these seven respondent carriers, and the Kentucky mileage for the same carriers and the percentage of the Kentucky mileage to the system mileage.

I would like to call attention to the fact that for the Illinois Central Railroad I have included the Yazoo & Mississippi Valley Railroad, not because I wanted to, but because I had to, not being able to separate them in the annual reports, except in a few instances, and in order to make it uniform, I carried it all the way through. I don't believe it would change the results any appreciable extent. After all, the Yazoo & Mississippi Valley Railroad is a part of the Illinois Central Railroad System, but I would have preferred not to have had it in here.

[fol. 2628] Mr. Oliver: For clarification, Mr. Examiner, might I ask a question right here? The Kentucky mileages that you show, Mr. Marks, are those mileage figures the mileage operated in passenger service or the total mileage?

The Witness: The total mileage.

Mr. Oliver: The total mileage?

The Witness: Yes, sir. On Sheet 4, I have shown the freight revenues of the respondents for the years 1938 to 1942, inclusive; also for the first six months of 1943 as compared with the first six months in 1942.

You will note that these revenues have increased from \$368,000,000 in 1938, to \$716,000,000 in 1942, using yound numbers. The increase in 1939 over 1938 was 11 per cent, and the percentages are shown straight through each year over the preceding year.

In the last line is accumulative percentage increase over 1938,—1942 being 94.6 per cent higher than 1938.

The lefthand two columns show that this increase is continuing on into 1943,—the 1943 six months figures show-

ing an increase of 19.6 per cent over the six months of 1942.

Sheet 5 is the same information with respect to passenger revenue, 1938 to 1940, these figures have passenger revenues of around \$31,000,000; in 1941, they were approximately \$45,000,000, and in 1942, they jumped to \$103,800,000; the increase in 1942 over '41 being 131.9 per cent, [fol. 2629] and the increase in 1942 over 1938 being 236.6 per cent.

In the first six months of 1942, the figures were \$37, 600,000; in 1943, \$83,550,000, an increase in '43 over '42

of 122.1 per cent.

Table 4, Sheet 6 shows the same information for mail, express, milk and baggage, except that in the case of 1942. I was not able to show the figures for all four items, but only for mail and express. That is due to the fact that the Commission's statement 43,200 is streamlined, and a considerable amount of information shown in the corresponding exhibit for the previous years is omitted from the statement 43,200.

# By Mr. Holifield:

Q. What commission do you refer to?

A. The Interstate Commerce Commission.

Q. All right.

A. However, by comparing the figures in the second column with those in the third column, it will be found that the mail and express for 1941 was almost all of the total for mail, express, milk and baggage. I think the figures run between 97 and 98 per cent. The increase in these items is not nearly, so pronounced as the increase from passenger fares. 1941 is only 9.2 per cent over 1938 and 1942 for mail and express is only 15.2 per cent over 1941.

Table 5, Sheet 7, shows total operating expenses—that is freight, passenger, mail, express and all others, not included in the three preceding tables. The total operating [fol. 2630] revenues also show a very pronounced increase year by year from 1938 up to 1942; the 1942 figure being approximately 192 per cent higher than 1938. For the first six months in 1943, the total operating revenues were \$502,000,000 against \$365,000,000 for the corresponding period in 1942, an increase of 37.4 per cent.

Q. Mr. Marks, at this point, can you give the relation between the increase in operating revenues and the increase in income. I mean the net income?

A. I don't believe it would be the appropriate place right here to make that. I will have something to say about that a little farther along. Before getting into that, I would like to refer to Table 6, Sheet 8, which shows the total operating expenses. Very naturally, the expenses have gone up with the increase in revenues, but certainly not nearly as great an increase. Whereas the total operating revenues 1942 over 1938 went up 102 per cent, the expenses only went up 68 per cent, and in the first six months in 1943 where the total operating revenues went up 37.4 per cent, the total operating expenses only went up 21.2 per cent.

Table 7 shows operating ratio for all operations, including freight, passenger and others. As is well known, the operating ratio represents the amount which the carriers paid out to earn \$1 of revenue. The average for 1938 was 70.2. Out of every \$1 they received from operating reveled. 2631] nues, they had to pay out 70.2 cents for operating expenses. That is what that means. This shows a decrease year by year up to 1942 when it had dropped to

Now, in the first six months of 1943, there was a still further drop in the operating ratio,—the 1943 figures being 56.9 against 64.5 for the first six months in 1942.

We come now to the railway tax accruals. There has been some evidence in this record about the increases in taxes, and these are shown in this exhibit. The total tax accruals for the respondent railroads being \$40,500,000 in 1938: \$43,500,000 in 1939: \$51,800,000 in 1940, and \$75,000,000 in 1941; \$185,000,000 in 1942. That is an increase in round numbers of \$110,000,000 in taxes; the percentage increase is 146.7, 1942 over 1941. That is in line with the information given by Mr. Tassin.

In the lefthand two columns, I have shown the Federal income tax of these carriers, '41 and '42.

In 1941, the Federal income tax was \$29,000,000; in 1942, \$131,000,000. In other words; of the \$110,000,000 increase in taxes, 1942 over 1941 of these respondent carriers, \$102,-000,000 is accounted for by the Federal income tax. And I would say from my study of this exhibit that a large part of the remaining \$8,000,000, or a substantial part of it

is accounted for by Federal payroll taxes, indicating that there has been little increase in the taxes in recent years [fol. 2632] by the states.

On that point, just looking in the so-called Blue Book—I think all of us are familiar with it—I find that the total state taxes of Kentucky between the years 1938 and 1941 remained between \$5,000,000 and \$6,000,000, the variation between the high and the high and the low being bout \$700,000, some increases and some decreases.

Table 9, Sheet 11, shows the net railway operating income for the corresponding period. The net railway operating income is what is left out of the difference between the revenue and the expenses after paying taxes, and the so-called rent item of equipment and facilities. This item has not increased in as great a percentage as the revenues due largely to the fact that they had to pay increased taxes.

Now, before leaving this sheet, I would like to revert back to Sheet 7, Table 5. From that exhibit, it will be seen that the total operating revenues of the carriers for the first six months 1943 over 1942 were about \$137,000,000, and on Sheet 8 the total operating expenses for the first six months 1943 over 1942 were about \$50,000,000. So the question is what became of the difference of \$87,000,000. Only about \$12,000,000 of that \$87,000,000 found its way into net railway operating income as shown on sheet 11.

That seems to substantiate the views expressed by Mr. Tassin that about 80 per cent of any increased revenues [fol. 2633] would be paid out for taxes and perhaps a few other items before finding its way into the net railway operating income.

That completes my explanation of that exhibit.

#### By Mr. Holifield:

Q. Do these figures come from the same source that you got the other figures from?

A. Do you mean Exhibit 9 as compared with Exhibit 8!

Q. Yes.

A. No, Exhibit 8, as I said, came from the reports made to this commission by the railroads, but which are the same as they do make to the Interstate Commerce Commission, whereas, as I explained in the beginning, the figures in the exhibit I just mentioned and have just described

came from the Interstate Commerce Commission's statistical Bureau of Figures.

Examiner Stiles: The authority is shown on sheet 2.

The Witness: Yes, that is right.

Examiner Stiles: Let the next exhibit be identified as No. 10.

(Exhibit 10, Witness Marks, marked for identification.)

The Witness: Now, on Exhibit 10, I have undertaken, as best I could, with the material available, to compute rate of return of respondents for the years 1938 to 1943.

On sheet 1 of this exhibit, I have shown a summary of investments in railway property of the different lines which were likewise taken from the same source as the preceding Exhibit No. 9. These figures, I think, are the same figures [fol. 2634] which formed the basis for Mr. Tassin's investment figures shown on page 6 of his Exhibit No. 6. That is so far as investment in railway property is concerned. I did not have available to me the figures showing cash and materials and supplies on hand, and I tried to arrive at that figure as best I could.

My first approach to it was to see what the Commission had to say about what was a proper allowance for working capital, which is a term which embraces these three items. I found on page 2410 of the ICC Act Annotated, this statement:

"Experience with the actual operating needs of carriers indicates that as a rule the requisite amount of working capital for carrier purposes is substantially less than 20 per cent of the annual operating expenses and in many cases is a much smaller amount."

Numerous cases are cited in support of that statement. Right there, I do want to explain that this had reference to what the Commission considered a proper amount of working capital, and is less, I think, than the actual amount of working capital ordinarily used by the railroads.

Another approach was obtained by reference to statistical summary No. 26 gotten out by the Association of American Railroads, Bureau of Railway Economics, dated September, 1942, which shows substantially the same information as I am undertaking to show here, and I found

the actual amount of working capital on hand for all Class 1 [fol. 2635] railroads in the United States ranged from 23.7 per cent to 33 per cent of the total operating expenses.

Now, I felt it would be entirely fair, in view of all of that, to employ a figure of 30 per cent of the total operating expenses. In other words, the figures I have shown here for cash and materials and supplies are 30 per cent of the total operating expenses shown on the following sheet. I am quite certain, however, that the final results in rate of return would not be changed more than a very small amount if I had used, say, 35 or 40 per cent, because the working capital bears such a small proportion to the property investment.

In 1942, the property investment figures were not shown in this streamlined report of the Interstate Commerce Commission statement 42,300, and so I have been forced there to arrive at some estimated figure, and I selected for 1942 the highest figure in the preceding four years which happens to be 1941, and I have carried that on into 1943. I believe I am safe in doing that, because it is pretty well known that the vailroads have not been in a position to make any substantial property investments during the past two years, due to their inability to buy equipment and engage in major construction projects.

Furthermore, it is well known that they have been engaged in a rather strong movement to abandon certain property on their lines which they considered not pos-[fol. 2636] sible, and which I assume would be ded cted from the property investment.

So, with this explanation, I have here my base figures. for the different years on which to compute a rate of return for the seven respondents or petitioning carriers. I had hoped this same information would be put in by Mr. Tassin, and I believe it will be shown when he breaks down his figures on page 6 of Exhibit 6, but he has shown the average for 22 years instead of showing it year by year, and in one of his succeeding exhibits, he shows the figures year by year for the whole Southern Region, but not for these particular carriers.

Now, I will pass over to Sheet 2 of this exhibit, taking first, the year 1938, the figures shown as total operating revenues are the same as those shown on Sheet 7 of Ex-The total operating expense figure is the same as

shown on Sheet 8 of Exhibit 9, the operating ratio was computed by dividing the evenues into the expenses. The net operating revenue is the difference between the revenues and the expenses. The railway tax accruals are the same as shown on Sheet 10 of Exhibit 9. The net railway operating income of \$79,000,000, round figures, are those shown on Sheet 11 of Exhibit 9, and the equipment and joint facility rents item is merely the difference between the sum of the tax accruals and the net railway operating income added together and then subtracted from the net operating revenues. In other words, the net operation of the tax accruals, the net operation of the tax accruals and the net operation of t

Now, that net railway operating income for 1938 represents 2.9 per cent of the valuation shown on the preceding sheet, and merely for purpose of comparison, I have shown the corresponding figure as computed by the carriers in their statistical summary No. 26 of September, 1942, for all railroads in the United States, that is all Class

1 railroads in the United States.

It appears that these seven respondents had a return about twice that of the average for the United States. The 1939 figures are computed in the same manner, and it will be observed that the respondents' return had increased from 2.97 to 3.76.

In 1940, it had increased further to 3.92; 1941, to 5.46. In each of these years, the return for the respondent cariers was substantially higher than the average of the Class 1 carriers for the United States. In 1942, it had increased further to 6.67:

Now, in the lefthand column, I have undertaken to compute the corresponding figure for 1943. It was brought about in this way: in Exhibit 9, on Sheet 7, I showed that for the first six months in 1943, the total operating revenues were 37.4 per cent higher than for the first six months [fol. 2638] in 1942; so, extending that to a yearly basis, I get the figure of \$14186,000,000 shown under 1943 as total operating revenue. In other words, this figure is 37.4 per cent higher than the corresponding figure for 1942.

Now, on operating expenses, I used the same formula, increasing the 1942 figure by 21.2 per cent because the total operating expenses for the first six months of 1943

of these respondent carriers were 21.2 per cent higher than for the first six months of 1942. The ratio works out 51.5 for the year '43.

In that operating revenue is the difference between the total operating revenue and the total operating expenses.

Now, the next step was to get my net railway operating income of \$196,763. That was obtained from Sheet 11, the carriers estimated there that their net railway operating income for the first six months of 1943 over the first six months of 1942 was 17.7 per cent.

Examiner Stiles: You said Sheet 11, but you did not identify the exhibit.

The Witness: Sheet 11 of Exhibit No. 9. Now, up to this point, I have got my net operating revenue and me net railway operating income. For equipment and joint facility rents I have used the figure for the preceding year in the absence of actual figures, \$6,605,357. As I explained before, the net operating revenue is the sum of the tax [fol. 2639] accruals, the rents, and the net railway operating income,—and having the rents and the net railway operating income, I can obtain the third factor, \$371,000,000 as estimated railway tax accruals for 1943.

Now, I have undertaken to sub-divide those accruals between Federal income taxes and all other taxes. viously, it must be an estimate, but in view of what has been said here, and what has been shown by the carriers' own methods, I have assumed that 80 per cent of the increase in net operating revenues, '43 over./'42, would be paid over to the Federal Government in the form of Federal income taxes. In other words, that item increase '43' over '42, \$216,000,000, in round numbers; I have taken 80 per cent of that and added it to the Federal income taxes for 1942, and obtained the figure of \$204,509,292 and subtracted that from the total railway tax accruals to get the estimated taxes for all other purposes, and that is shown as \$66,762,000. I think a comparison of that figure with the two preceding years, \$53,000,000 and \$45,000,000 looks like it is about in line. Now, my only purpose in trying to arrive at the Federal income tax this year is to determine what the carriers' rate of return would have been if they had computed it before taking off Federal income taxes. I don't have the Federal income taxes for the years prior

to 1941, but I do have them for 1941 and 1942, and this estimate for 1943.

[fol. 2640] Now, taking the net railway operating income of \$148,729,567 in 1941 and adding to it the Federal income tax of \$29,444,853, I get a total figure of \$178,174,420, which I am calling, for lack of a better term, net railway operating income before Federal taxes. Now, that figures out 6.54. In other words, if they had computed their return before paying the Federal taxes, their return would have been 6.54 for the year 1941 instead of 5.46. In 1942, a corresponding figure would have been 10.84 instead of 6.07, and for 1943, 17.96 instead of 7.05.

That completes my statistical data, but I have one more

matter that I would like to mention before closing.

Much has been said about uniformity of fares in Kentucky and also Kentucky vs. Interstate Fares. It has been shown here that so fare as the Chesapeake & Ohio Railway is concerned, they are not here asking in this proceeding authority to increase any fares on the Big Sandy Line, extending southward from Ashland, Kentucky. At the present time, they maintain an intrastate fare, on that line published in a tariff on file with the Kentucky Railroad Commission identified as K.R.C. No. P-66, a basis for coach fares on that line. It is true these fares are published with an expiration date. They have been in effect for some three or four years and they have been extended from time to time. They were scheduled to expire June 30, 1943, but by a supplement, the expiration date was [fol. 2641] extended to December 31, 1943.

### By Mr. Holifield:

Q. What fare is that?

A. This is a coach fare, both one-way and round-trip, applicable on the Big Sandy line of the Chesapeake & Ohio, and is designated as an experimental fare.

Q. What is the fare,—what is the rate?

A. It is made with relation to the one-way unrestricted fare. We all know that the one-way unrestricted fare is 3.3 cents per mile, and I have confirmed that by reference to the tariff itself, that is C&O KC No. 5 tariff. It shows here that where the unrestricted fare is so much, then, the one-way coach fare is so much, for example, where the unrestricted fare is \$3.30, which is the fare for 100 miles,

the one-way coach would be \$1.65,—in other words, it is 1.65 cents per mile, or the same as in effect on the L&N and the Southern Railway in Kentucky; and on round trips, it is 1½ cents per mile, or somewhat less than the round-trip fare being maintained by some of the respondents in this proceeding.

Mr. Mohr: Do you mean 11/4 cents or 1.4 to

The Witness. No, it is 1.25. That completes my testimony unless you have something that you want to ask me.

Mr. Holifield: I have not. At this time, let me offer for filing Exhibits 7 to No. 10, inclusive, by the Witness J. E. Marks.

Examiner Stiles: Exhibit 7 to 10, inclusive are received [fol. 2642] in evidence.

(Exhibits 7 to 10, inc. Witness Marks, received in evidence.)

Examiner Stiles: Do you wish to cross examine?

Mr. Oliver: Yes, sir, I have a few questions that I would like to ask.

Cross examination.

## By Mr. Oliver:

- Q. Take up first the subject that you discussed last, namely, the fares on the Big Sandy lines of the C&O. Isn't it a fact that those fares are, while they may be labeled experimental fares, aren't they bus competitive fares of some sort, or do you know?
  - A. I assume they are.
- Q. Well, now, isn't it a fact also that those fares apply locally on that line and that from a point on the Big Sand line to other points in Kentucky, the regular 2.2 cent fare is applied?
  - A. That is correct.
  - Q. Now, will you turn, please, to your Exhibit No.-
- A. But on that point, if it is possible to defeat those through fares as easily as these people say, I am wondering if it is not being done up there today:
- Q. Will you turn, please, to your Exhibit No. 9, page
  - A. All right.

Q. The figures shown on page 4, of course, are gross figures?

A. Gross freight revenues, yes, sir.

[fol. 2643] Q. Looking at the figures for the first six months of 1943, it is a fact, is it not, that those figures reflect the increase granted in Ex-Parte 148, in the freight rates?

A. They would from January 1, 1943, to May 14, 1943, inclusive.

- Q. In other words, the increase insofar as freight rates is concerned was taken off or suspended as of May 14, was the date?
  - A. May 15.
  - Q. May 15, 1943!
  - A. Yes, sir.
- Q. And assuming the same volume of traffic in the latter half of 1943, the revenues would be correspondingly less, would they not?

A. Yes, to the extent of about 3 per cent; I will make that about—

Q. Wasn't it about 7 per cent? .

A. No, it is a little more than 4 per cent; the maximum was 6; it varies from 3 to 6; with coal less than 3 per cent, about 4 per cent.

Q. Will you turn to page 7 of that same exhibit?

A. Sheet 7?

Q. Sheet 7 of Exhibit 9.

A. All right.

Q. Now, if we were to undertake to make a comparison [fol. 2644] between the total revenues received by these Kentucky lines during the latter half of 1942, you would deduct from the 1942 figures the figures for the first six months of 1942, would you not?

A. Yes, sir.

Q. Well, now, looking at the total revenues for the seven Kentucky lines, and deducting the revenues for the first six months of 1942 from the total figures for 1942, you would get, roughly, \$500,000,000, would you not?

A. That is correct.

Q. Which would compare with \$502,500,000, roughly, in the first six months of 1943?

A. That is correct.

Q. Doesn't that indicate to you that the increase in railway revenue has about reached its peak?

A. No. sir.

- Q. Do you think that this reflects a seasonal condition?
- A. I think it reflects, in other words, my opinion is that it is normal for the railroads to do less business in the first half of the year than in the last half of the year.
- Q. Does that apply to passenger business as well as freight under modern-day conditions?
  - A: Well, I don't know about passengers.
- Q. Do you think that the passenger business is the largest in the first half of the year, larger than it is in the [fol. 2645] latter half of the year under present conditions?
- A. I don't know why there would be any; any statement I would make along that line would be simply a guess.
- Q. The fact remains if you take the first half of 1943 and compare it with the last half of 1942 from a total operating revenue standpoint, there has been little or no increase in operating revenues,—that is a fact as shown by your statement, is it not?
- A. Well, but as I say, under normal conditions, the first half of the year would be less than the last half of the preceding year. In this case, as you say, it about equals it. In other words, there is a progressive uptrend right on through these years, and the first six months of 1943, and so far as we can see, I don't see why we should have a higher amount of business the last half of 1943, than we did in the last half of 1942.
- Q. And you think that would apply to passengers as well as freight?
- A. Let's turn back to Sheet 5—there is a progressive increase in passenger revenues for each year, and it continues on up into 1943.
- Q. Well, now, Mr. Marks, with the present situation as to railroad equipment, taking into consideration now that no equipment, no passenger equipment is being built or added to the equipment that the carriers now have, there is a point, is there not, at which they will reach its satura[fol. 2646] tion point, so to speak?
- A. Yes, sir, I think so, but I don't know whether that has been reached or not.
  - Q. You have a pretty good idea that it has?

A. When I rode on the trains last Spring, I thought it had about reached its limit, but it is a whole lot worse this Spring.

Examiner Stiles: Before we go too far away from this subject—

Mr. Oliver: Yes, sir.

Examiner Stiles: Let me ask this. You don't recall any reason why passenger travel would be likely to be more in the latter half of the year than in the first half of the year? Is passenger travel affected in some considerable extent, do you think, by vacation travel?

• The Witness: I would think it would be higher normally in the latter half of the year than in the first half, but not having seen any figures for the first half vs. the last half, like I have with freight, I just he sitate to express an opinion

on that.

Examiner Stiles: Do you think that the vacation travel would be heavier in the latter half of the year than in the first half?

The Witness: I think we would find that we have more holidays in the last six months of the year, and I know that [fol. 2647] most people take vacations after July 1 than they do before July 1, and we have our Labor Day and Thanksgiving and Christmas in that portion of the year, which is a very heavy period of travel, and it seems to me that it ought to be higher in the Fall, in the last six months, than in the first six months of the year.

Mr. Miller: I may point out the same thing Mr. Oliver suggested on freight might also be applied to this situation in the year 1942 as compared with the first six months, which shows the last six months of '42 was higher for the

total traffic.

Mr. Oliver: I can't concede that they were proportionately higher, but I will concede that they are somewhat higher.

The Witness: I will say it might be greater or a lesser per cent than I have shown, but we have this barometer of the first six months to go by, and it is the best barometer that we have, I think.

### By Mr. Oliver:

Q. Most of us stay at home these days instead of travel-

A. We should.

Q. Please turn to Exhibit No. 10, Sheet 2.

A. All right.

Q. Looking at the year 1943, total operating revenues, the reference mark indicates that you have used, in arriving at the estimated total operating revenues for 1943, the same [fol. 2648] rate of increase over '42 as the first half of '43 over the first half of '42. That is correct, isn't it!

A. That is correct.

Q. Now, in making that estimate, did you take into consideration at all the suspension of the Ex Parte 148 increases insofar as freight is concerned?

A. I did not.

Q. So that that would have to come out of that esti-

mated figure, would it not?

A. That should have some—that should have some bearing on it, but, as I said before, it would be only a little more than 4 per cent, and it would be only applicable for a half year, so it should not change those figures by more than 2 per cent if my formula is correct.

Q. Well, now, insofar as the passenger revenue that goes into that estimated figure, you have assumed also that the passenger revenue in the latter half of 1943 would increase in the same proportion as the first half of 1943 increased over 1942, have you not?

A. That is correct.

Q. Do you feel that is going to happen, or do you think there is a possibility that the railroads can continue to increase their passenger traffic in the latter half of this year as they increased it in the first half over the first half of 1942?

[fol. 2649] A. I think it is fair to assume that it will.

Q. Well, now, Mr. Marks, looking at equipment and joint facility rents on the same sheet, Sheet 2 of Exhibit 10?

A. Yes, sir.

Q. Why didn't you use the same formula for arriving at equipment and joint facility rents that you used in arriving at total operating revenue?

A. It was not available to me, and I couldn't find it in

the Commission's report which I had.

Q. You didn't know what the increase had been?

A. No, but after all, that is a relatively small item in the total figure, and it doesn't seem to bear any particular relation to income; I think it is shown by the fact that back in 1938 when your revenues were only \$427,000,000, your equipment rents were \$6,809,000, and in 1941 when your revenues were 50 per cent higher, your rents were 66% per cent lower.

Q. You might have used the 1941 figure just as well as

the 1942 figure, might you not?

A. Well, I was using the highest in order to give you the benefit of it, and to make your net that much lower.

Mr. Oliver: Well, that is very nice of you. I believe that is all. Thank you, sir.

## By Mr. Gray

Q. Will you turn to Sheet 3 of your Exhibit No. 8, Mr. Marks? Just for the purpose of correcting a possible error, could you check the miles of railroad operated for [fol. 2650] passenger service of the Illinois Central Railroad in Kentucky? Is that figure correct?

A. Do you mean the figure of 563?

. That is right.

A. That is shown in your reports to us as being the average miles of road operated in passenger service by the Illinois Central Railroad during the year 1942.

Q. I want you to check it, if you could. It looks a

little high to me.

A. Do you think that the difference between that and your freight mileage should be greater than shown here?

Q. That is just my opinion.

A. I will be glad to check it if the Examiner will give me about two minutes.

Examiner Stiles: During the recess? The Witness: All right.

### By Mr. Gray:

Q. On your Exhibit No. 10, the total operating income for the year 1943 as computed by you was computed by using a 37.4 increase as the basis.

A. Just one moment, no. 17.7 per cent as shown on Sheet 11 of Exhibit 9.

Q. That is your net. Did you use that?

A. I used 17.7 per cent.

Q. I don't think that you understood me. I can't get it straight in my own mind. Sheet 11 deals with net rail-[fol. 2651] way operating income. I asked you for the percentage of increase used for total operating revenues. Did you use that 17.7 per cent on your total operating revenues?

A: No, on my total operating revenues I used 37.4 per

cent as shown on Sheet 7, Exhibit 9.

Q. That is right. Now, that 37.4 per cent increase is the percentage of increase of both freight and passenger?

A. Yes, and all other operating revenues.

Q. Then the figures shown on Sheet 4, Table 2 of your Exhibit No. 9, the percentage of 19.6 per cent—

A. I got it-

Q. A change in that percentage of increase would also change your percentage of increase in total operating revenues.

A. Do I understand what you are undertaking to say is if the freight revenue for the last half of 1943 should be less than 19.6 per cent less than over the last half of '42?

Q. Then that would make a difference in your percentage of increase used by you to compute the whole year's total

operating revenue?

A. Well, obviously, if the operating revenue for the last half does not stand up against the first half, that is the same rate of increase, then I would have to reduce that figure.

Q. On Sheet 4 of your Exhibit No. 9, dealing with freight revenues, you show an increase of 19.6 per cent, increase in [fol. 2652] the first six months of 1943 over the first six months of 1942. Will you break that down into months for me—the per cent of increase over the preceding months of 1942?

A. I couldn't do that without going back into your monthly reports which I don't have here convenient, but if it would help any, I would be glad to work them out and submit it at any time that it would be convenient.

Q. I would like to have it, I would like for you to show the—

Examiner Stiles: For what roads? Just for the Illinois Central or for the others too? Mr. Gray: I think this should be set forth for all of them. This deals with all the roads there; I think you should show the percentage of increase in January, 1943, over January, '42, and the same figure '43 for February as compared with '42 and on up through June.

The Witness: I have no objection to doing that.

# By Mr. Gray:

Q. From your own knowledge, isn't it true that the percentage of increase in January, '43 over January, '42 was very much greater than the increase in June, 1943, over June, 1942?

A. I wouldn't know without checking back against those monthly records, I couldn't say; I was using as much of the vear of 1943 as available.

Q. As compared with the corresponding month in 1942?

A. That is true.

[fol. 2653] Examiner Stiles: You say that you don't have those records. How long will it take you to get them and

prepare the exhibits?

The Witness: I think in my Lexington office I have these reports, month by month. If the carriers will be good enough to mail me immediately the monthly reports for the first six months,—I am sure Mr. Tassin has it readily available.

Examiner Stiles: If the carriers has that evidence and Mr. Marks does not, I am wondering why the carriers don't put that evidence in themselves. It would expedite the matter.

Mr. Oliver: Mr. Tassin says that he can furnish the information.

Examiner Stiles: Now, state on the record what it is

that you want permission to file?

Mr. Gray: We want permission to file the percentage of freight increase in 1943 over 1942 by months for the first six months of 1943.

Mr. Tassin: That is freight revenue, Accounts Nos. 101

and 121.

Mr. Miller: Mr. Examiner, the figures in this exhibit are in amounts. Why not have the exhibit to at least include the amounts for each month rather than the percentages so that the comparison can be made in that way.

Mr. Gray: The percentages will suit our purpose.

Mr. Miller: Will you put the amount in!

Mr. Tassin: May we be off the record for a second, Mr. [fol. 2654] Examiner?

Examiner Stiles: Off the record.

(Discussion off the record.)

Examiner Stiles: Back on the record. It is understood that in addition to the percentages, that the figures from which those percentages are derived are to be stated. Permission is granted to file that within ten days. Send two copies to the Secretary of the Commission with advice that you have mailed copies to other parties of record.

## By Mr. Mohr:

Q. Get your Exhibit No. 7. What is the purpose of this exhibit?

A. For whatever it may be worth.

Q. How do the bus fares in Kentucky compare with the bus fares from and to Kentucky, interstate, do you know L

A. No, I do not.

Q. Don't you know that they are on the same basis?

A. I think that they are.

Q. Do you know on what basis they are computed?

A. I believe that they were originally computed on a basis of 1½ cents per mile for one-way trips and 10 per cent less for round trips for the relatively short hauls of something like 100 miles, and as you go over that distance, they graded down.

Q. But they have deviated from that basis in numerous instances, haven't they? You own exhibit shows they are

not uniform.

[fol. 2655] A. I think they have.

Q. Now, on your Exhibit No. 8, look at page 4 of Exhibit 8 for a moment. I was curious to know why you only show the L&N and the C&O in that top bracket.

A. Because I couldn't get the other roads.

Q. Is that the reason?

A. Yes, sir. While on that point, I was trying as best I could to determine what it would cost the Kentucky public to get this increase, and I put that in there to show as much of the Kentucky intrastate traffic as I could, and from that date on, that Sheet 4, which you have just referred to, the Commission in its decision in the Kentucky case estimated that based on 1942 traffic, the increase would be \$400,000.

I was very pleased to note that Mr. Tassin's Exhibit 6, page 3 came almost confirming that,—he showed \$426,000 for the increase for the last ten months of 1942, and the first two months in '43, which just almost confirms our estimate of \$400,000.

Q. Do you have any traffic or transportation conditions to point to or to advance for insisting on the continuance of a lesser level of passenger rates in Kentucky than in the North?

A. We have a lower freight schedule in Kentucky than we have on interstate Traffic, and that has been approved by the Interstate Commerce Commission in a 13th Section Case.

[fol. 2656] Q. That does not answer my question. It has to do not with the interstate, but with the conditions between Kentucky on the one hand, and the north on the other, Official territory on the other.

A. We have never been able to get the benefit of the North in our freight adjustments, and I don't see why we should try to get our passenger rates raised on a parity with the North.

- Q. You have never contended for a lesser adjustment of rates than in the North, have you, in Kentucky, for a lesser level?
  - A. We have contended for-
  - Q. For a lesser level in Kentucky than in the North?
- A. We have contended for the Official territory basis, but I don't know that we have contended for a lesser basis.
- Q. Why should there be a lesser basis in the case of passenger rates than in the case of freight rates?
- A. Certainly we don't want to lose what we have got until we get what we think we are entitled to.
- Q. Do you think that the interstate level of passenger rates to and from Kentucky is too high?
- A. I would be glad to see them lowered to the Kentucky level.
- Q. But you wouldn't go to the extent to say that you thought that they were too high?
- A. We haven't been sufficiently interested to file a com-[fol. 2657] plaint against them.
- Q. Now, your Exhibit No. 9, page 3, you show there the ratio of Kentucky mileage to the system mileage. I didn't quite understand why that separation was made.

A. Well, I just thought it might have some value in here to show that. I haven't used those percentages anywhere in my computation.

Q. I couldn't see where you had either, and I was wondering if you had any idea of using those in your brief to make

any calculations?

A. I had not thought that far ahead. I really have no hidden purpose in doing it. I notice that they are about

the same as Mr. Tassin shows.

Q. It is not your thought the railroad should be required to establish differences or varying charges on different portions of this line depending on the density of its traffic either freight or passenger traffic, is it?

A. No, I wouldn't analyze it to that point of refinement.

Q. As an experienced accountant, have you anything to add as to the carriers contention that the railroads should be permitted to earn a fair return on their property devoted to public service viewed over a period of five or ten years, rather than based on a period of one year at a time?

A. Well, I think they are entitled to a fair return on their

properties, yes.

[fol. 2658] Q. And in determining that question, it is proper to consider a number of years, rather than a single year at a time? You would go along with that, would you?

A. I think Mr. Tassin has gone entirely too far back in his calculations. I don't think that you should now come along and try to make up for those depression years of 1930, '31 and '32 when very few other people have been able to make that up.

Q. How far would you go!

A. I have not decided on any particular number of years.

Q. But it would be proper in your judgment to consider a number of years rather than one year at a time?

A. I think so.

Q. Disregarding the fact that the railroads are earning a considerable profit now, do you know why the railroads now should not be permitted to make a fair charge for the

service of transporting passengers in Kentucky?

A. I think that you pick the most inopportune time possible to try to do that. In the first place, the passenger is not getting the service today that he was getting on the lower fare of 1.5 a few years back, and, in the second place, when you take a dollar from the public, after taxes, you only get 20 cents-out of it, and if you are going to raise your

fares and rates to get your net up to what you think it should be, it would be an awful burden on the public.

[fol. 2659] Q. Do you think that it would be a more opportune time to try to increase fares to a reasonable level after the war's depression occurs? Would you advocate that?

A. I am not conceding that they are not on a reasonable level now.

Q. I understood you to say in reply to my previous questions that you found no fault with the Interstate level?

A. I said that we had not been sufficiently dissatisfied with them to go to the trouble to file a formal complaint against them.

Q. Would you be willing to express an opinion as to what would be an appropriate time to increase passenger fares to a reasonable level—assuming for the purpose of this question that they are not on a reasonable level now?

A. I would rather not do that.

Q. Would you be willing to express an opinion as to whether the state and interstate rates should be on the same level?

A. I think it would be desirable that they be on the same level, but, of course, that level can be reached by the reduction of the interstate fares as well as an increase in the intrastate fares.

Mr. Mohr: That is always true. I think that is all. Thank you.

Examiner Stiles: We will take a short recess.

(Whereupon, a short recess was taken.)

[fol. 2660] Examiner Stiles: Did you check that report for counsel, Mr. Marks?

Mr. Gray: Mr. Marks checked it and satisfied counsel.

Examiner Stiles: You are excused, Mr. Marks.

(Witness excused.)

Examiner Stiles: Has the Kentucky Railroad Commission any further evidence?

Mr. McCarthy: I wish to call Mr. Tanner, please.

# PAUL E. TANNER was sworn and testified as follows:

Direct examination.

# By Mr. McCarthy:

Q. State your name, age and residence.

A. My name is Paul E. Tanner; 31 years of age; Frankfort, Kentucky.

.Q. Do you hold any official position, and, if so, what?

A. I am Supervisor of Franchise Taxes for the Department of Revenue here in Frankfort, for the state of Kentucky.

Q. State briefly your experience in revenue and financial

matters.

- A. Upon graduation from the University of Kentucky in 1937, with a degree in Accounting, I came to the Department of Revenue, and have been an accountant in the handling and auditing of income taxes, corporation license taxes, and the valuation of bank shares; since October of 1942, I have been Supervisor of Franchise Taxes, the principal [fol. 2661] duties of which consist in the computation of the assessments of the railroads and public utilities subject to the approval of the Kentucky Tax Commission, which has legal authority to levy such assessments or make such assessments, rather.
  - Q. For whom are you appearing in this proceeding?

A. On behalf of the Railroad Commission.

Q. Have you an exhibit which you wish to file in this case?

A. Yes sir.

Examiner Stiles: This will be identified as Exhibit No. 11.

(Exhibit 11, Witness Tanner, marked for identification.)

### By Mr. McCarthy:

Q. Who prepared this exhibit, Mr. Tanner?

A. It was prepared by Miss Foreman, in the Department of Revenue, at my direction, and I am personally familiar with the method.

Examiner Stiles: This just states "Petitioners' properties", but does not identify them. So that there may be no doubt in the record, I suggest that you identify the carriers embraced in the exhibit. The Witness: I can give you the seven roads; Chesapeake & Ohio; CNO&TP; the Gulf, Mobile & Ohio; the Illinois Central Railroad; the Louisville & Nashville Railroad Company; NC&StL and the Southern.

By Mr. McCarthy:

Q. Are the figures in this exhibit true and correct to the best of your knowledge and belief?

A. They are.

[fol. 2662] Q. Please proceed with an explanation of the exhibit.

A. These figures were secured from the Income and Franchise Tax Returns of the seven roads for the years indicated. The first column is the franchise assessments as of

December 31 for the year indicated.

The franchise assessment is determined by the capitalization of the net railway operating income—let us say a five-year average of the net railway operating income, at 6 per cent, and averaging with the 5-year average on the stock and bond value of the road for the same five years. The proportion allocated to Kentucky is based on the proportionate mileage in the state of the entire system. As is indicated, these assessments are relatively stable in that the Kentucky Tax Commission has a policy of not raising or lowering an assessment more than 6 per cent of a given road in a given year, unless there has been some substantial change in the nature of the road's operations.

The second column "Income tax accruals" is the income tax accrued to the state of Kentucky for the year indicated. Our state rate is 4 per cent, and the decline in 1942 from 1941 is caused primarily by the fact that the Federal income tax accrued is a deduction before arriving at the net income

subject to the state tax.

Q. Before you leave column 2, is your state income tax derived by taking your tax of 4 per cent upon the earnings

[fol. 2663] of the preceding year?

A. That is right. The figures here are the accruals; at the end of the year when the road computed how much they had made, then they set up this provision to pay the taxes.

Q. Take your 1939 income tax accruals, \$308,082.07, just

what period does that represent?

A. That represents the tax to be paid in 1940 on the 1939 income, but it had become a liability as of December 31, 1939.

Q. Please proceed.

A. The "franchise tax accruals" line or column represents the amount of tax paid to the state of Kentucky by the seven carriers during the year following the December 31 assessment. In other words, the tax on the \$229,122,492 assessment as of December 31, 1938, is the \$640,653.35 paid in 1939. This tax is at the rate of 5 cents per \$100 on real estate, and 50 cents on all other property, both tangible and intangible.

Q. Has that rate been changed during the period from

1938 to 1943?

A. It has not. That is a statutory rate,

Q. Proceed, please.

A. That is about all that I can say from the exhibit.

Q. Is it not a fact that the counties and cities and towns base their taxes and rates upon these assessments?

A. If you like, I can give you the procedure as to how it is

[fol. 2664] Q. Please do so.

A. Because of the great difficulty in having a carrier assessed by each of its local districts, the Legislature has seen fit to have all of its property assessed by the State Tax Commission here at Frankfort. After this is done and these assessments in the lefthand column determined, they are broken down as to taxing jurisdictions as to the counties and the cities and the various school districts.

Q. On what basis?

A. The real estate and physical property that can be allocated is assigned to the locality in which it is. Most roads also have a definite value of rolling stock which they allocate along the line at so many thousands of dollars a mile, and it is based on the miles of main track in each given locality. In some towns it may be only a half a mile, and in some counties it may be 40 or 50 miles; and the franchise value is also allocated on the basis of the mileage. That is provided by statute.

Franchise value is something that is not exactly understood by a number of people. After we have computed the value of the road by using its capitalized earnings and stock and bond value and allocating its mileage to Kentucky, the fraction of it, then we equalize at 80 per cent because most other property in the state is assessed at 80 per cent approx-[fol. 2665] imately, and in order to order to bring the roads down, that is used, and if a given road is figured at \$100,000,000 and its real estate and track figures, say, \$40,000-

000, and its rolling stock and tangible personal property figures twenty-five, then the remaining thirty-five of the hundred is considered to be franchise, and is subject to the full local and state rates. That thirty-five million is allocated on the basis of the miles of the main track in each jurisdiction. After those allocations have been made, certifications of these values are sent to the county clerks and the clerk prepares a bill which is collected by the county sheriff for the county, and the county schools, and the city tax collector, as a rule, handles his own. They are subject to the full local rate which varies from one jurisdiction to another. These maximum rates are fixed by statutes as to what each local jurisdiction can charge.

Q. Is there much variation in the local rates from year to

A. No; primarily because your local jurisdiction needs the money, and they are as high as they can go.

Q. I notice in your exhibit the figure "6" did not print very well on the mimeograph machine.

A. Do you mean in the 1941 income?

Q. Give us the 1939 final assessment, please, sir.

A: \$229,506,648.

[fol.2666] Q. And please give us the 1939 franchise tax accrual.

A. \$640,653.35.

Q. And please give us the 1941 income tax accrual.

A, \$673,506.29.

Q. It was figure "6" that didn't print well?

A. Yes sir.

Mr. McCarthy: I offer Exhibit 11.

Examiner Stiles: Exihibt 11 is received in evidence.

(Exhibit 11, Witness Tanner, received in evidence.)

Examiner Stiles: Is there any cross examination of this witness?

Mr. Oliver: I have no questions. Examiner Stiles: You are excused.

(Witnessed excused.)

Examiner Stiles: Anything further? Mr. McCarthy: I believe that is all.

Donis S. Whitnack was sworn and testified as follows:

Direct examination.

By Mr. Miller:

Q. State your name for the record.

A. Doris S. Whitnack.

Q. Your business address?

A. Federal Office Building No. 1, Second and D Streets, Southwest, Washington, D. C.

Q. By whom are you employed?

[fol. 2667] A. Employed by the Office of Price Administration, in the transportation branch.

Q. What is your position with that employer?

A. I am a transportation economist in that branch.

Q. Will you please describe your education and ex-

perience in connection with such duties?

- A. Graduated from Radcliffe College, A. B. in Economics, and have done post graduate work principally in transportation, corporation finance, and statistics at Boston University, American University and George Washington University; been employed as an economist by the executive office of the President, National Resources Planning Board, and for the past two years and a few months by the transportation branch of the Office of Price Administration.
- Q. Was the task of preparing some statistics in connection with this case assigned to you?

A. It was.

Q. Have you prepared some exhibit containing such statistics?

A. Yes.

Q. Would you please identify them in the order in which you will discuss these various exhibits, reading the titles as you give the numbers, starting with No. 12?

(Exhibit 12, Witness Whitnack, marked for identification.)

The Witness: Exhibit No. 12 for identification is a one-page document entitled "Net railway operating income be-[fol. 2668] fore Federal income taxes selected railroads operating in Kentucky, 1936-42-43. That is the first exhibit that I will take up.

(Exhibit 13, Witness Whitnack, marked for identification.)

The Witness: My next exhibit, No. 13, consists of one sheet, and bears the caption "Freight service operating ratio selected railroads operating in Kentucky 1936-1943."

(Exhibit 14, Witness Whitnack, marked for identification.)

The Witness: My next exhibit, No. 14, consists of one sheet, and bears the caption "Passenger service operating ratios selected railroads operating in Kentucky 1936-1943."

(Exhibit 15, Witness Whitnack, marked for identification.)

The Witness: My next exhibit, No. 15, consists of one sheet, and is entitled "Operating revenues and expenses assigned to passenger service ten railroads operating in Kentucky."

(Exhibit 16, Witness Whitnack, marked for identification.)

The Witness: And following that is my Exhibit No. 16, which is an appendix to the last exhibit marked Exhibit No. 16, consist of a number of pages, and shows the method used in assigning 1943 revenues and expenses to passenger service.

(Exhibit 17, Witness Whitnack, marked for identification.)

The Witness: And my Exhibit No. 17 is a one-page document entitled, "Valuation data for selected railroads oper[fol. 2669] ating in Kentucky."

# By Mr. Miller:

Q. Will you discuss briefly your Exhibit No. 12?

A. Exhibit No. 12 was prepared to show the net railway operating income before Federal income taxes for selected roads which operate some mileage in Kentucky. The exhibit, I think, speaks pretty well for itself, showing the large increases, as, for example, for the 12 months ended June 30, 1943, these roads showed—the nine roads indicated here showed 192.8 increase over the average for 1936

to 1939, and an increase of 79.4 per cent over the 12 months ended December, 1941.

Mr. Oliver: Might I ask a question for clarification at this point? I notice that you show 12 months ended June 30, 1943. Does that column duplicate the figures or a portion of the results shown in 1942?

The Witness: Yes, it is the 12 months immediately preceding July 1, 1943, so that it does include the last half of

1942.

Mr. Oliver: Thank you.

By Mr. Miller:

Q. Will you proceed to discuss Exhibit No. 13?

A. Exhibit No. 13 is presented to show the improvement in freight service operating ratios for five roads shown and for ten Southern roads operating in Kentucky as indicated in the footnote. The first six months of 1943 has been estimated, and I will explain the method of estimate in dis[fol. 2670] cussing the following exhibit when it will be easy for me to make it clear.

You will not here that the year 1942 showed very favorable trend for the 1936-39 average, and in some cases the first six months of 1943 is better even than for the average for 1942 and in some cases there is a slight increase over the increased 1942 average, but we feel that since in all cases those are so slight that considering that these are six months figures, and anticipating that there will be an improvement as the year 1943 progresses, which we feel is perfectly logical to expect, that the six months figures for 1943 compare favorably with 1942.

Exhibit 14 shows the passenger service operating ratios for the years 1936 through 1939 and estimates for the first months of 1943. There, again, there is a remarkable improvement over the preceding years. That is even true \$\\$\$s.

to the first six months of '43 as against '42.

Now, Exhibit No. 15 is submitted to explain the method by which we estimated what the passenger service operating ratio had been for the first six months of 1943. As indicated in the exhibit, we obtained an operating ratio of 61 for ten railroads which are not listed here, but are the same ten as shown on a previous exhibit, and the first six months of 1943 this operating ratio for the passenger service was 61.

The appendix identified as Exhibit 16 explains how the [fol. 2671] revenues and expenses were allocated to the passenger service. The method is explained, I think, quite clearly in this appendix.

There is just one thing which should be changed here, and that is in this formula where we have shown what "K"

represents-it should read:

"K = The 1942 ratio of Rp — (Pr. plus Mr plus Er) to Or."

As indicated in the text of this appendix, we found by an examination of the carriers' accounts and their allocations of revenues over past years according to the rules prescribed by the Interstate Commerce Commission that to all intents and purposes, practically all of the passenger revenue, ma-le revenue and express revenue were assigned to the passenger service. In allocating all other revenues excepting freight revenues, we assumed that the proportion allocated to the passenger service in 1943 would approximate the proportion in 1942, and in that category when we made the assumption is a relatively small amount of total revenue assigned to passenger service in any event.

Now, expenses were derived by the formula indicated here, K times the total operating expenses, and K here is derived as indicated by using the least squares regression equation based on the relationship between the ratio of passenger expenses to railway operating expenses with the ratio of passenger car miles to total transportation car

miles.

[fol. 2672] And this is not as complicated as it sounds. We put it in those terms so if the carriers choose to have any of their statisticians check it, they will have an exact term what we mean and can check it by the rules.

Our justification for using this method is that we have found that there is a very rigid relationship between the ratio of passenger expenses to total operating expenses and as compared with the ratio between passenger ear miles and total transportation car miles.

The supporting data for that is shown in these graphs where we took—we found by scattered diagrams that there was a straight line relationship between these two series, and the equations for each line are shown on the graphs.

There is a very high degree of correlation for each one of these as shown by the fact that the ten southern roads shown in this appendix and in the graphs, that the coefficient of correlation was .99, and the standard area of estimate was .18.

For the CNO&TP Railway, the coefficient of correlation

was .87, and the standard area of estimate is .47;

For the C&O, the coefficient of correlation was .903, and the standard area of estimate .21;

For the Illinois Central Railroad and the Y&MV Railway, the coefficient of correlation is .90, and the standard area of estimate is .63;

[fol. 2673] For the Southern Railway Company, the coefficient of correlation is .93, and the standard area of estimate is .62;

For the L&N Railroad, the coefficient of correlation is .96 and the standard area of estimate .28.

Those are some, or almost the best correlation which I have ever seen in the course of my dealing with railroad statistics, and those measurements of relationship indicate that by basing your 1943 relationship upon the method as shown here, there would be a very very slight chance for the corresponding to the corresponding

- Q. In other words, this Exhibit 16 is not only an explanation of the method used, but also the extent of its accuracy, is that correct?
  - A. Yes, sir.
- Q. And the extent of accuracy shows about what percent of possible error?
  - A. About one half of 1 per cent.

Q. Will you go ahead and explain that?

A. That is explained in those figures which I gave in the coefficient of correlation and standard area of estimate, and that is the reason those are submitted in the testimony.

Exhibit No. 17 is submitted as valuation data for the roads shown. We don't propose to analyze it or do anything with it at this time.

Mr. Miller: Mr. Examiner, that is all I have for the wit-[fol. 2674] ness. I offer these exhibits, 12 to 17, as evidence. Mr. Oliver: Mr. Examiner, I object to the introduction of Exhibit 17, because it shows on its face that the figures in Column 1 are taken from the ICC Statement No. 4142, which is not an official publication of the Interstate Commerce Commission, but as I understand it, is a statement put out by one section or one bureau of the Commission without the stamp of approval of the Commission itself, and it is the same statement which was excluded by Commissioner Aitchison in Ex Parte 148 proceeding for that reason, that it was not an official publication of the Commission, but a statement of opinion by one section or bureau of the Commission and didn't bear the stamp of approval, which would carry the approval of the Commission.

Examiner Stiles: Your objection, I take it, is that there is no one present who can stand cross examination on the exhibit?

Mr. Oliver: Yes, sir, and it goes to that too.

Mr. Miller: Mr. Examiner, this exhibit was prepared to show as best we could from the sources which were available to us, rate making bases; admittedly, it is the opinion of the Bureau of Valuation, and it is offered only for that reason.

Examiner Stiles: Is the witness able to stand cross examination on the data shown in it? I take it not.

[fol. 2675] Mr. Miller: I will ask her to what extent she is.

The Witness: I had nothing to do with the preparation of the figures: I took them from the pamphlet or document in which they are printed; it says that the property values shown are those recommended by the Bureau of Valuation for the purpose of these calculations as the rate-making values as of January 1, 1940. Although their use for such a purpose has been approved—although they have not been approved or adopted by the Commission, they are recommended by the Bureau of Valuation.

Examiner Stiles: They are recommended by the Bureau of Valuation!

The Witness: Yes, sir, they are recommended by the Bureau of Valuation, and because we had no other figures prepared by the Bureau of Valuation for a recent year, that is just taken as an indication.

Examiner Stiles: Exhibit 12 through 16, both inclusive, are received in evidence.

(Exhibits 12 thru 16, inclusive, Witness Whitnack, received in evidence.)

Examiner Stiles: The objection to Exhibit 17 is sus-

tained, and that exhibit is not received in evidence.

Mr. Miller: Mr. Examiner, may I have permission to file at a later time as a later filed exhibit within ten days, Exhibit 17, excluding Column No. 1, to which objection was [fol. 2676] taken?

Mr. Oliver: May we go off the record?

Examiner Stiles: Off the record.

(Discussion outside the record.)

Examiner Stiles: On the record.

Mr. Miller: Mr. Examiner, in view of the action taken upon the respondents' objections to Exhibit 17, I will withdraw Column No. 1 to that exhibit, which is the rate making values as of January 1, 1940, estimated by the Bureau of Valuation, and in view of the request made by respondents off the record; I will ask the witness to please explain the contents of the other five columns of the exhibit, that is Exhibit 17.

The Witness: On Exhibit 17, Columns 2 and 3 are taken from the preliminary abstract of railway statistics for the years shown and refer to Schedule 211-N investment in railway property used in transportation service.

# By Mr. Miller:

Q. Do they include the figures in Columns 5 and 6?

A. No, these figures in Columns 2 and 3 include whatever depreciation and amortization our defense projects were cut down in those years, but they do not include cash and

materials and supplies.

Column 4 corresponds to investment in transportation property accounts 701, 702, 702 ½ on the comparative gen[fol. 2677] eral balance sheet of the companies in their annual reports to the Interstate Commerce Commission; accrued depreciation, and accrued amortization of defense projects are also taken from the balance sheets in the annual reports, and includes Accounts 775, 775½, 776, 776½ and 777. I think that covers that. Cash, materials and supplies are the two accounts shown, respectively, as 708 and 716 in the general balance sheet.

Mr. Oliver: Mr. Examiner, with the elimination of Column 1 by counsel for the Office of Price Administration, and the explanation made of the remaining figures in Exhibit 17, I withdraw any objection to its receipt at this time.

Examiner Stiles: Exhibit 17 as corrected by the elimination of Column 1 is received in evidence.

(Exhibit 17, Witness Whitnack, received in evidence.)

Mr. Miller: Just one further statement. Is Exhibit 17 stated in thousands of dollars.

The Witness: Yes, that should have been put on the heading of the exhibit—all dollar figures are in thousands.

Examiner Stiles: Any further questions?

Mr. Miller: No, the witness is available for cross examination.

Examiner Stiles: Any questions?

Mr. Oliver: No questions in view of the explanation that has been made of Exhibit 17.

[fol. 2678] Examiner Stiles: You are excused.

(Witness excused.)

Examiner Stiles: Is there any further evidence in opposition to the petition?

(No response.)

Examiner Stiles: Any rebuttal?

Mr. Oliver: No rebuttal, Mr. Examiner.

Examiner Stiles: Suspend the record.

(Discussion ouside the record.)

Examiner Stiles: Resume the record.

Mr. Marks: Mr. Fxaminer, if it is in order, I would like to say that by agree ent of counsel, we would like to have a proposed report in this case, and I understand that counsel for the applicants is agreeable to brief being filed November 1.

Examiner Stiles: State on the record why you ask such an extension of time.

Mr. Marks: Well, it falls to my lot to wield the laboring oar in writing this brief, and I anticipate being in Chicago in a series of coal rate hearings from the Midwestern field to Northern Illinois beginning September 23. We have already had two hearings in those cases extending over a period of more than two weeks, and the carriers are not yet through. It looks like that we will be in Chicago for two to three weeks beginning September 23, and by the time we get back, we rather expect to have a further hearing in [fols. 2679-2694] Western Kentucky coal, from Western Kentucky to Chicago, and it will be a difficult problem for us to even get started on this brief before sometime in the middle of October, but we hope to be able to complete it and get it filed by November 1.

Examiner Stiles: Briefs will be due on November 1, 1943. All briefs are due on the same day. A proposed report will be issued.

The hearing is closed.

(Whereupon, at 12:40 o'clock p. m. Thursday, September 9, 1943, the hearing in the above-entitled-matter was closed.)

[fol. 2695]

Kentucky Passenger Fares

I. C. C. Docket No. 29000-Witness: Aiken

Southern Railway System

Examples of possible reductions of *Interstate* fares for tickets good for transportation in coaches only by purchasing to the point nearest the State Line at which trains are regularly scheduled to stop and rebuying therefrom to *Interstate* destinations.

Iten	n /		
1.	Burnside, Ky. to Cincinnati, Ohio	90.75 0.18	\$3.81 2.93
		0.10	
2.	Saving Burnside, Ky. to Indianapolis, Ind. (2 24)		0.88 5.82
	Burnside, Ky. to Louisville, Ky (1.65¢) Douisville, Ky. to Indianapolis, Ind (2.2¢)	2.55	5.25
3	Saving Cincinnati, Ohio to Chattanooga, Tenn. (2.24)		0.57 7.55
	Cincinnati, Ohio to Ludlow, Ky. (2 24) Ludlow, Ky. to Pine Knot, Ky. (1 654) Pine Knot, Ky. to Chattanooga, Tenn. (2 24)	0 18 3 25 3 12	6 .55
4.	Saving.  Danville, K.y. to Cincinnati, Ohio	1.95 0.18	1 00 2 71 2 13
5.	Saving.  Danville, Ky. to Chattanooga, Tenn. (2.24)  Danville, Ky. to Pine Knot, Ky. (1.65¢)  Pine Knot, Ky to Chattanooga, Tenn. (2.2¢)	1 .30 3 .12	0.58 4.88 4.42
	Saving		0.46

			. /
5. Danville, Ky. to St. Louis, Mo	(2:2¢)		8.32
Danville, Ky. to Louisville, Ky Louisville, Ky. to St. Louis, Mo		1.60 6.27	7.87
C	4		0.45
Saving. Georgetown, Ky. to Chattanooga, Teni	(2 24)		5.90
Georgetown, Ky. to Chattanooga, Tent Georgetown, Ky. to Pine Knot, Ky.	(1.65¢)	2.15	0.00
Pine Knot, Ky. to Chattanooga, Ten	n (2.2¢)	3.12	5.27
. Saving			0.63
Georgetown, Ky. to Birmingham, Ala.	(2.2¢)		9.09
Georgetown, Ky. to Pine Knot, Ky.	(1.654)	2.15	0.00
Pine Knot, Ky. to Birmingham, Ala.	(2.2¢)	6.35	8.50
Saving.			0:59
J nenel	1.		
ol. 2696] Southern Railway	y System		
Examples of possible reductions of Interstation in coaches only by purchasing to the pains are regularly scheduled to stop an estimations.	point nearest the St	ate Line a	t which
em			
Georgetown, Ky. to Detroit, Mich.	(2.24)		\$7.25
Georgetown, Ky. to Ludlow, Ky.	(1.65¢)	\$1.15	
Ludlow, Ky. to Detroit, Mich.	(2.24)	5.74	6.89
Saving.			0.36
Junction City, Ky. to Chicago, Ill	(2.2é)	94 9 9 1	8.76
Junction City, Ky. to Louisville, Ky	(1.654)	1.70	
Louisville, Ky. to Chicago, Ill.	(2 2¢)	° 6.77	8.47
Saving		1.	0.29
Junction City, Ky. to Cincinnati, Ohio	(2 24)		2.79
Junction City, Ky. to Ludlow, Ky.	(1.654)	2.00	
Ludlow, Ky. to Cincinnati, Ohio	(2.24)	0 18	2.18
Q	(	. \	0.61
Saving.	(2.24)	occioni/	15.84
2. Junction City, Ky. to New Orleans, La	v(2.2¢)	1.30	. 10.01
Junction City, Ky. to Pine Knot, K. Pine Knot, Ky. to New Orleans, La.	(2.24)	14.19	15.49
Pine Knot, Ry. to New Orleans, La.		14.10	10.10
Saving.			0.35
3. Lawrenceburg, Ky, to Chattanooga, To	enn(2.2¢)		5.54
Lawrenceburg, Ky. to Pine Knot, K	y(1.65¢)	1.95	
Pine Knot, Ky. to Chattanooga, Ter	nn(2.2¢)	3.12	5.07
Quine			0.47
Lexington, Ky. to Cincinnati, Ohio.	(2 24)		1.91
Lexington, Ky. to Ludlow, Ky	(1.654)	1.30	
Ludlow, Ky. to Cincinnati, Ohio	(2 24)	0.18	1.48
Edulow, Ry. to Chichman, Onio		0.10	•
Saving.	***********	*****	0.43
5. Lexington, Ky. to Chattanooga, Tenn.	(2.24)		5.65
Lexington, Ky. to Pine Knot, Ky Pine Knot, Ky. to Chattanooga, Te		3.12	5.12
		•.	0.53
Saving.	(2.24)		8.6
6. Lexington, Ky. to Atlanta, Ga	(1 854)	2.00	0.00
Lexington, Ky. to Pine Knot, Ky Pine Knot, Ky. to Atlanta, Ga	(2 26)	6.16	8.16
Saving			0 49

[fol. 2007]

#### Southern Railway System

Examples of provible reductions of Interstate farm for tickets good for transportation in conches only by purchasing to the point measure the State Line at which trains are regularly interfuled to stop and releging therefrom to Interstate dustinations.

Dem					:/:		
	operalle, Ky. to Chattanouga, Tran.	-	24).	1.		-	82
	Lemireille, Ky. to Pine Knot, Ky	in the same	dile)	83	est.	1	1
1	Pine Knot, Ky. to Chattanouga, Tenn.	(3	263	*	EZ.		88
1.			rem	and the same of	hima	general Se	7
18 L	morrille. Ar. to Atlanta, Cia		***	5 ,	1.	-	. 200
000 - 000	Languerelle, Kr. to Pour Kant, Kr	1,8	-		200		-
	Place Kneet, No. to Atlantia, Co.	100	240	-	504	1:0	200
	The same of the sa			6	1000	1	-
	Surging					and a	Arg.
10. La	mneetile, he he lash-simetile, Pie	- (3	No.			. 150	ME.
	Longwille, Ky to Pin Kant, Ky		4640	3	M		. /
1	Plan Knist, Ky to Jacksoneille, Pla.	2.0	200	50	Mr.	-	-
		-	3.	1	400	3 8	one-
	Record	3.		100			20.
200	ullion, Kr. to Chartanoga, Tons.		36				
	Landiew, Kr. in Plant Rand, Kr.	107	Mid				-
	Plan Kniff, Kr. to Chattamoraya, Tana.		340		S		-
	Section					. 0	-
91 W.	choliscoville. R. o. and Santinamong . Tame.	-18	Ser.		*		-
	Carfteilmerillie. Co. in Plane Caiet, Co.	1.78	Man		1		1
	Pleas Rough, Res. St. Chairmannage, Tonns.	23	bat.		14	*	40
		- 0	-		SWITT.	- 6	35
1	Accing		. 0				16
	obstancedle, his he Cleanman, Chin-	- 3	\$400 m				148
	Carlladimerille, Ka ta Cantleto, Ka	- 18	Milati:	4	*		
	Lughor, Ke as Chainman, Ohne	-	\$00		10	/8	SHE.
			· × ×	nich ziec	mercal.	1,	age.
-	athereils. As so Champanage, Posts.		Seat.	•			Mr.
	Mariber reelin A. o. tin Frem Arten, M.o.	- 60	500				
	Pau Line, Ly to Chartimongs, Com-	10	200		43		10
	The second secon					SCALE S	1
1.	Special	1	1 /	. 2			60
Fred 300	DAY.			100	4		) .
	Americana Barreras Ber	Seine.			21	1	-

Examples of possible radiantenes of Johnston Income to takets good to example taken as reaching and the possible to the finite line to which taken as reaching the finite of the finite finite

f to me						
24	Shothy ville, & i se Knoweille, Torre.  Shothy ville, & v. no Prin Knot, & v.  Pap Knot, & v. Knoweille, Torre.	Date of the last o	•	501 108	# ## # ##	
25	Somewat, Ke to Charage, Et	bell steel			1 0	
286	Seminary to Detroit Work 4 9 Seminary Ke to Lasting Re	100 100 100		401	* 100 * 500	
	Landbow, Ry to Durmon, Mark	24		-	9. 50	

The state of the s

,								
27.	Somerset, Ky to St. Louis, Ma. (2 Somerset, Ky to Louis Fills, Ky. (1	24)		2 1	94.	. 9	2	8
	Louisville, Ky to St. Louis, Mu.	24)		-	27		6	
			1				-	6
28.	Phinares, Ky to Consequent, Obio	247			18		*	6
	Ladies, Ky to Community Office 3	20				3	M	
		100				2	-	
-2%	Steams, Kr to linkumpain, Ind.	24)					- 34	
**	Longoville, Kr. to Indianajedia, Ind. (2	Pari			76	3	49	ě
1						*		í

fine manns

London Passager Farm

Simelianes Carle un Spreitum

Companies abserving the large panel (or remargiration good in remarker to 20 20 20 20 20 20 20 passengers are passed to 20 20 20 20 20 passengers topositing season theretoes between position of the contractor.

			/	Cheen	10. K (100)
	The state of the s		She .		in Farm
13.	· · · · · · · · · · · · · · ·	/	Tentes:	S. Asserti	Terrespondents
Tanin		/	Willer	T men	Panentger
1 1	Compegition, Co de Cliefonnentt, White	10 Sec.	-76	100	
1.3	Country ten ber ber Gentermen Le	Miles		20	Mt 45
· /-	Consession & or to Consessible Dances	in the	500	2 (61	
: 1997	Manualine & o Secretary &	(N. 1000)	19884	\$ 300	# 72
S Property	Consulta La de Suchete Come	3 10	940	5 890	
19	Manuelle & a to Composite & a	50 Miles	- 645	17 186	8. W.L.
5 8	Caragoniere, A.s. to Manufere, Chie-	12 - 300	. 416	5 5%	
17.	Stangentines & . As Moreovers &	Miss	46	9 166	18- 458
-	Consequent, Pro to Willeleberre, Chair	18 don't		5 50	
	Banksanthan Air St. Manager, Air	3.80mm	488	5 ME.	4 74
4	Mundley the AA of Cauch Severe Sant	A Ann	100	2 8	
	Manthester Nie War at Management Wes	CHARGE .	40	3 98	
. 1	Lunellem & na d'affection Chice	CN Sector	1.48	18 . 40	
	Samples and the State of the St	The Parison	1990	1 191	D 576
*	Sallton to to fir Veryon last	(\$ \$60°)	486	T. W	
1 "	Ramifferen And wife Philippinetes II	and the same	1466	4: 77	8.15
	Bennerales and by the Manner and	101			
	Manage	(B. 446)	Best	2 898	
	Prominent of the Red in Common Die, R. c.	13. (14)	167	12 200	8 200
111	Muchementlie & o es Consentinty, Souli	in and	(849)	. 41	
	Minifferentlie, Lie ne Conthese &c	distant.	160	E ME -	300
58	Wannerm & ne Altereiten Chare	dr.(Na)	製造物	4 10	
	Windstein Co. to be predicted & c.	484	\$110	1 90	2:35-
母數	Wenthanten E.A feil sennennen, Cfreie	(State)	100	. 1. 30	*
	Cinchester Le ve Consecuto Le	THE CONTRACTOR	MAN !	1 71	# E4
Bak	117001	-	10		
188	Chambacticerers, &c. to Cantibille, Tones.	12 per	247	2 19	
	Allmelluttletteren, Er te Merettebotten A.s.	CS. Miles	5.65	2 10	⊕ 400
10.86	Promitten Es an Confinencepolite Conf.	(\$.54)	874	2 41	
	Proposition & & to Bermiting Commen, & a	A dilet	100	2:00	3 495
5.5	Birmel Bei, &c ne & mit wille, Tanbe.	(8.24)	3.006	2. 225	
	Mamiltonian, & a. Languerille, & a.	11.40.41	148	2 13	1 000
- 1984;	Lucesmoothin, M. y. fin. C. applied litt. Toront.	(2.24)	14.	4 11	
	Bongiorella & s & Startonireclis & s	(1.664)	144	3 20	0.91
ZA.	Landerville, W. a. Mouris Brown, Land	V2.24	2000.	6.11	
1	Lanjaville, Ko sa kowsk, Ko	V 61-63	770	4 50	1.61
		· of med.	-	1 1	

#### EXHIBIT No. 4 .

# Kentucky Passenger Fares I.C.C. Docket No. 29000—Witness: Aiken Southern Railway System

Examples showing the fares paid for transportation good in coaches only by INTERSTATE passengers, also paid by INTERSTATE passengers traveling equal distance between points in Kentucky.

	Item.		. :	4 1
	18. Louisville, Ky. to Gallatin, Tenn (2.2	é) · 159	3.52	
	Louisville, Ky. to Guthrie, Ky (1.6	5é) 164	2.80	. 0.72
	19. Louisville, Ky. to Murfreesboro,	1	6.	
-	Tenn(2.2	() 214	4.84	
	Louisville, Ky. to Middlesboro, Ky (1.6	56) 217	3.65	1.19
	20. Lexington, Ky. to Columbus, Ohio (2.2)	e) 197	4.44	
	Lexington, Ky. to Owensboro, Ky (1.6	5é) 199	3.35	1.09
	21. Lexington, Ky. to Richmond, Ind (2.2	é) 142	3.30	
	Lexington, Ky. to Hasard, Ky(1.6	5é) . 147	2.30	1'.00
	22. Lexington, Ky. to Lima, Ohio(2,2	e) · 209	4.66	
	Lexington, Ky. to Lynch, Ky(1.6	56) 208	3.50	1.16
	23. Owensboro, Ky. to St. Louis, Mo (2.2	é)· 207	4.91	
	Owensboro, Ky. to Winchester, Ky (1.6)	5é) 217	3.70	1.21
	24. Owensboro, Ky. to Nashville, Tenn. (2.2)	e) 175	3.89	77.5
	Owensboro, Ky. to Frankfort, Ky (1.6	5é) 170	2.90	0.99
	25. Bowling Green, Ky. to Chattanooga,			
	Tenn(2.2	e) 225	4.99	* ***
	Bowling Green, Ky. to Covington, Ky. (1:6	5() 225	3.75	1.24

[fol. 2701]

#### EXHIPIT No. 5

# Kentucky Passenger Fares I.C.C. Docket No. 29000—Witness: Tucker

#### Illinois Central System

Examples of possible reductions on Interstate fares for round-trip COACH tickets by purchasing to the point near the state line at which trains are regularly scheduled to stop and rebuying therefrom to destinations beyond.

Example No. 1		
	Round- Trip Coach Fare	Round- Trip; Coach Fare
Paducah, Ky. to Cincinnati, Ohio (Interstate Fare).  Paducah, Ky. to Louisville, Ky. (Intrastate Fare).  Louisville, Ky. to Cincinnati, Ohio (Interstate Fare).	\$7.48 4.80	\$13.80
Combination of Interstate and Intrastate Fares		12.28
Reduction Example No. 2		\$1.52
Louisville, Ky. to Memphis, Tenn. (Interstate Fare) Louisville, Ky. to Fulton, Ky. (Intrastate Fare) Fulton, Ky. to Memphis, Tenn. (Interstate Fare)	\$8.97 4.95	\$15.15
Combination of Interstate & Intrastate Fares		13.92
Reduction	- /-	\$1.23

Examples showing the round-trip coach fares paid for transportation by interstate passengers in comparison with round trip coach fares paid for transportation by intrastate passengers traveling approximately like distances between points in Kentucky.

Example A			Difference	
		Round Trip	in favor	
Fulton, Ky. to Granada, Miss	Distance Miles 221.6 223.4	Coach Fare \$8.95 7.43	Intrastate Passenger \$1.52	,
Example B	1.			
Mayfield, Ky. to Memphis, Tenn	144.9 145.4	5.75 4.84		

. C. C. Docket No. 29000-Witness: Tassin Ехипят No. 6

[fol. 2702]

BEFORE THE

IN THE MATTER OF PASSENGER FARES AND CHARGES INTERSTATE COMMERCE COMMISSION

1. Had increase sought in intrastate passenger fares and charges between points in Kentucky been in effect between December 1, 1942 June 30, 1943, \$306,951 addit@hal.would have been earned by the 7 railroads parties to the petition in this case. Raised to a year's basis twould amount to \$526,200. For the 12 months ended Feb. 28, 1943, the amount would have been \$426,586, and for the 12 months ended FOR INTRASTATE TRAFFIC BETWEEN POINTS IN KENTUCKY STATISTICAL FINDINGS AND DATA IN SUPPORT THEREOF Statistical Findings and Data in Support Thereof

that would amount to \$526,200.

For many years past passenger operations of these railroads have been in the red. From 1936 to 1940, both inclusive, in a range from 35 millions of dollars, average deficit has been 24 millions. In 1941 there was a drop to 18 millions. In 1942 there was an income of 8. Railroads of the Southern Region, in common with railroads of the country in general, are chronically in need of additional revenue. For example, for the average of 10 years (1921-30) Class I Railroads of Southern Region earned only 4.20% on their investment in railway The 6-year cumulative deficit 1936 to 1941, both inclusive, 36 millions, in order to equalize which between 12 and 13 years as good as 1942 will have to be anticipated. 26 millions of dollars, average deficit has been 24 millions. In 1941 there was a drop to 18 millions. 11/nillions. The average deficit for the 7-year period (1936-42) was 18 millions.

Specifically, for the 22-year period (1921-42) these 7 roads as a group averaged only 4.30% on their investment.
Weighting the return for each road in proportion to miseage operated, entire line in comparison with in the State of Kentucky, produces to the State of Kentucky by 6%. That the basis of measurement (investment in railway property used in transportation service) here utilized is conservative, is evidenced For the succeeding 12 years (1931-42) the yield was but 2.48%, while for the 22-year period (1921-This means that if a 5-3/4% return on investment is to be realized, revenues for the entire line should be increased by 8%, and as 2 by.

fact that 10% additional would have had to be raised in order to reproduce these properties as of January 1, 1940.

For the average year of 7 (1936-42) and for the 7 roads parties to this petition, the freight operating ratio was 59 as compared with Adding to railway operating expenses the net income deductions for railway tax accruals and operating rents we produce an outgo or freight of 72 as compared with 127 for passenger. Passenger operating ratio of 113.

10. From 1936 to 1940, inclusive, passenger carrying cars on the average earned 16¢ per car mile. In 1941 that jumped to 201/2¢, and 1942 to 38¢, the average for the 7-year period being 21¢.

11. The cars in baggage, mail, express and milk service, popularly known as head-end cars, in a range from 25 to 28¢, earned on the aver-This is 5¢ a mile more than earned by the rear end or passenger-carrying cars.

For the average of 6 years (1937-42) passengers in Pullman cars paid on the average 2.42¢ per mile, in a range from 2.29 to 2.57¢. For the average of 6 years (1967-42) passengers in coaches paid on the average 1.59¢ per mile, in a range from 1.44 to 1.69 For the 6-year period (1937-42) passenger coaches earned on the average 30¢ per mile in a range from 21¢ to 52¢. For the 6-year period (1937-42) Pullman cars earned 27¢ per mile in a range from 20 to 47¢. The total of railway tax accruals for the year 1942 increased 394 percent over what it was in 1936.

Railway tax accruals assigned to passenger under rules prescribed by the Interstate Commerce Commission in 1942 were 246 percent. The general average rate of hourly compensation was 24 per cent greater in 1942 than it was in 1936. For Southern District roads as represented by C&O, IC, L&N and Southern, the index of average unit prices of railway materials railroads parties to this petition averaged 68 passengers per train. (including fuel) was 28% higher on December 1, 1942 than it was on October 1, 1936. the 5-year period ended with 1920 the railroads parties to this petition averaged 68 p excess of what they were in 1936.

For the 10-year period ended 1930 they averaged 50 passengers per train.

26. For the 10-year period ended with 1490 they averaged 10 passengers per car.

27. Recapping, the 7 roads parties to this proceeding for the first quarter of 1943 averaged 29 passengers per car in comparison with 24 28. For the 6-year period (1937-42) these roads averaged 19 passengers per car in comparison with 24. 29. For the 6-year period (1937-42) these roads averaged 19 passengers per coach. Recapping, in comparison with 120 passengers per train in 1942, 63 in 1941, the average 1921 to 1940 was 46, and 1916 to 1940, 51. For the 5-year period ended with 1920 these roads averaged 18 passengers per car. For the 10-year period ended with 1930 they averaged 12 passengers per car.

For the 6-year period (1937-42) they averaged 11 passengers per Pullman car

		1284				
	•	٤.	.4			
		E S		•	88558	122
		onths En 6/30/43 823,580 11,803	247,698 1,390 7,478 306,951 526,200		Verage 477, 599 475, 669 633, 891 559-301	2,056,787 2,056,787 \$17,895,617
		onths E. 6/30/43 \$23,580 11,803	247,698 1,390 7,478 \$306,951 \$526,200		Average 475,6 475,6 1,033,8 3,559,3 4,848,5	7,89
	28	W	. 188			
	Far	in Intrastate Revenues  Year Ended 7 Months Ended 6/30/43 6/30/43 827,087 19,306 19,306 11,803	/		886 888 888 888 888 888 888 888 888 888	537
7	ate	8 84 ade	25 25. 25. 25.	reto	1942 562 615 502 130	118
	tras	trastate 6/80/43 537,087 19,306	2, 248 12, 531 1495, 755	d.	= °	1 9,748,714
	n In	X Sept	2 - 2	3	7570-0	-
	Belgin	.5		eboi	25.25.25.25.25.25.25.25.25.25.25.25.25.2	738 862
	Sour	Loss		ly II	1941 423, 1, 180, 4, 377, 4, 915, 6	387
	She	2,28/43 \$31,371 15,584 20,942	26, 586	yla hual	3 -44	\$18,387, \$136,387,
- 0-	node	2,28/43 2,28/43 431,371 15,584 20,942 346,158	2,070 10,460 \$426,586	O.A.	655755	
	ad I	*		eng and itue	1940 229,343 804,385 308,317 604,410 815,661 764,263	5, 222, 58; \$25, 748, 961
	E E			Passion Ker	2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	5.7
	uring			it nami	200	
	y D	/		Star Star	1939 1189,350 107,153 107,153 104,562 404,562 841,791	043
	Hav		TOBO	erce 8 in	88 5 8 5 3 5 3 5 5 5 5 5 5 5 5 5 5 5 5 5	189
	uld Ken		1	Net Railway Operating Income or Deficit—Passenger Only Computed by Interstate Commerce Commission and Annus Class I Railroads Operating in State of Kentucky (Petitioners in This Proceeding)	- 00 - wo	<b>\$</b> 24, 189, 043
	. A 50		each	30 5 E	206 206 206 717 717 826 826 826	: 1
	/hat	ned <sub>u</sub>	. 6	stat ione		0.37
	Ne se	Č	mne	etit.	2 2 2 2 3 3 3 3 4 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	3
	25	way	part	26.70		22 min
· e.	fect	E E	De	anilw.	88 88 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	18 : 28
	5 E	Road Pany Peiffe y-	ting.	et Gran	887 887 887 761 761	78.
*. • .	een een	Pac Pac	com	ZS T	B 200 4	\$21,078,023 /er 12 /mmerce Con
	Revenue Reflected by What Would Have Accrued Had Increase Sought in Intrastate Fares Been in Effect in the State of Kentucky During the Periods Shown Below	O B D	by Accounting Department of each railroad.	(As Required to Be Computed by Interstate Commerce Commission and Annually Reported Thereto)  (Realiroads Operating in State of Kentucky (Petitioners in This Proceeding)	252244	\$21 Over
	Loss in Passenger	See See	ot by	Pa. 99	5,603 6,431 6,978 6,978 6,694 429	out_
	Besc	Bans ans St. St.	que	equire	55, 435, 686, 1,006, 5,605, 5,429, 648, 3,951,	\$22,763, -1941 to whe ou
	E .	Orico Orico Rai C	l e	E. E.	* _ mm w	\$22 1 19 8 0 1
	. 8	o dille	tion ed c	. 5	11::::::	red red
٠		ti, Nath	mish ay a	*		its, equi e
	10	E Christian	Fur Fur	:: 4		defice com
	2705	Che Wille	al appr ICE: F	706] Roads	Fo 7	Total rullative of slike 19 motes In
	[fol. 2705]	The Chesapeake and Ohio Bailway Company Gulf Mobile and Ohio Bailway Company Gulf Mobile and Ohio Railwad Company Illinois Central Railroad Company Louisville & Nashville Railroad Company Nashville, Chattanooga & St. Louis Railway Southern Railway	Total Annual approximation SOURCE: Furnished on request by A * Months of May and June estimated	Hol. 2706]	CNO & T G M & O C RR C RR C R St.	umulative deficite, 1936-1941 ears like 1942 required to whe ou Denotes Income.
		Z	F < 2 .	* 5	20-7-20	Cumulative deficits, 1936–1941 Years like 1942 required to wipe out—over 12 Source: Annual Reports to Interstate Commerce Commission

	Railway Property	Total	Total		Operating Income	ome.	
Year	used in transpor- tation service a	Operating Revenues	Operating Expenses	Taxes	Amount	Rate of	Income
176	743	\$684,727,318	349	058	946	2 27%	7
92	9	488	554, 924, 589	636,	999	4.23	791
0.04	9.0	9	,558,	17	644	4.73	202
	2,080,696,741	646 561 969	594,875,149	44,982,899	142,445,074	2.00	86,311,303
		100	400	957	565	2.60	890
26	883	464	031	857	OAG	R 17	1
		166	642	64	488	4 22	35
	527	814	088	9	545	80	250
30	3,324,161,166	767, 324, 856	579,047,334	51,147,375	132,634,559	3.99	73.059.466
		628	.008	974	405	2.65	30,860,679
lvg. 1921–30	3,006,173,253	770,704,548	591,201,527	45,537,572	126,128,361	4.20	69,810,548
931	3,321,736,996		823	863	110	1 33	
	356,	781	379	28	802	228	40,000,
933	3,245,727,101	388,514,453		256	21	187	10,020
934	88	242	267	034	520		000
50	22	651	342, 529, 025	. 28,079,336	49,301,947	1.55	D 24.736.251
98	3 174 468 831	ON	100	9.0	1		
37	3, 155, 343, 353	202	FEFF	500	140	2.52	743,
938	36	30%	400	DEC.	3	2.35	601
99	20	031	8	900	3	3:	34
0	3, 184, 435, 186	545,276,338	404,502,838	48.623.247	81, 932, 778	2.00	11,667,811
146	202	940	000				
12	2 220 644 061	030,242,209	472,968,083	76,416,137	138,673,394	4.24	845
	14,	924	504	194, 186, 597	214, 151, 928	6.41	153, 250, 208
Avg. 1931-42	\$3,229,010,410.	\$534,754,180	\$390,336,964	\$52,781,156	\$80,190,951	2.48	. \$10,991,594
Avg. 1921-42.	\$3,127,720,794	\$642,004,348	\$481,639,038	\$49,488,617	\$101,071,592	3.23	\$37 797 489

Southern Region

[fol. 2707]

	Rate of Return 6.94 3.77 3.73 4.30
	706 596 7706 77178 7721 182 499
	16, 16, 16, 16, 16, 16, 16, 16, 16, 16,
	836 179 22.22 22.22 179 186,11
	ttion Dash pplies
0	stment in V. Property Fransportation and Cash an
Inclus	Envestment in Railway Property sed in Transportat rvice, including C Materials & Sup \$521,451,860 772,451,860 772,157,262 586,724,446 469,700,458 99,179,924 612,860,440 82,469,465,503 srican Railroads, in
Average Annual Rate of Return—1921–1942, Inclusive Class I Railroads Operating in State of Kentucky	fing)  Investment in Railway Property Used in Transportation Service, including Cash and Materials & Supplie \$521,451,860 77,391,113 77,391,113 102,157,262 586,724,446 586,724,446 699,700,458 99,179,924 612,860,440 \$2,469,465,503
1 1921	(Petitioners in This Proceeding)  Used Servand Association of Americal Association of Americal American America
Return	a This sociati
late of	oners it
nual E	Petiti Econom ginning
rage At	ilway foo (be
Ave	of Ra
	Burea Burea
	St. Louis. By to the Bute Commercial
	o o o o o o o o o o o o o o o o o o o
	Chesapeake and Ohio Transportation Service, including Cas Source: Chattanooga & St. Louis Coulouisville & Nashville Chattanooga & St. Louis Southern Total Source: Reports of Carriers to the Bureau of Railway Economics, Association of American Railroads, and to the Interstate Commerce Commission (beginning in 1936).
<b>1</b> 902	hesapeake and N.O. T.P. alf, Mobile & (Incis Central uisville & Nasshville, Chatt uthern.  Total.  Total.
[(01, 2708]	Chesapes Chesapes Calf. Mos Illnois C Louisville Southern Tota

		Entire Line			In State of Kentucky	entucky
Road	Miles	Return.	Weighting	Miles	Return	n Weighting
ake & Ohio	3.092	6.9	21.458	. 631	6.94	4,379
	337	5.50	1,854	198	5.50	1,089
	1,969	2.82	5,553	43	20.00	121
	4,841	3.37	15,927	. 641	20.00	2,109
	4,745	3.77	17,889	1,800	3.77	0,780
	1,090	2.47	2,692	3	2.47	526
	Pic.0.	0.6	165.45	141		15 150
	22,588	3.97	89,670	3,514	4.31	10,100

[fol 2

	Entire Line	Entire Line			In State of Kentucky	ucky
Mile		Katio	Weighted	Miles	Ratio	Weighted
0	337	101		188	201	19,998
8.1	69	113		3	113	4.859
4,745	45	108	512,460	1.800	108	194.400
080'1	08	116		98	116	6,960
6,5		110	716,540	141	110	15,510
22,588	. 88	108	2,443,065	3.514	106	372,823

	Basis B 103,688,432 107,070,871 107,070,871 107,088,432 110,382,735 627,038,792 627,038,792 110,382,792		50 161 65 116 65 116 65 115 69 115 69 107	20
0961	Basis A \$540,256,570 96,658,754 92,804,032 652,919,047 534,627,218 92,663,853 545,268,555 545,268,555 100	194	. 7. 4. 5. 5. 5. 5. 5. 5. 5. 5. 5. 5. 5. 5. 5.	3 %
of January 1, usal	rking 192,2 192,2 689,6 689,6 732,8 732,8 394,3	2	Fr. Page 138 98 138 138 138 138 138 138 138 138 138 13	
of Kentucky Current Appraisal	•	1940	7 828885 7 87 8 2 4 2 4 2 5	: '
ommon Ca	ion 1 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	1939	Frt. Pass. 52 191 68 118 67 118 67 118 65 142 65 14	7.
perty Used in Cilroads Operatin	Reproduct 465 \$544,654, 859 98,087, 899 100,411, 140 622,217, 673 569,677, 141 575,189, 571 \$2,607,108, 100 Aussen Aliroads Operating (Petitioners in	1938	7.1. Page 59 117 68 1173 66 115 72 143 72 143	
of Value of Pro	Product Cost 2517,786 91,057 86,144 79,155 493,418 82,342,214	3	7. 12.85 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	- 7
Elements		3	77. 73. 74. 75. 75. 75. 75. 75. 75. 75. 75. 75. 75	
	Road Road N O & T P N O & T P N O & B T P N O & St. 1. C & St. 1. Outhern Stal atio Source: Exhibit A-11, Ex	Roads	90/	Total 59

[fol. 2713]

	Average	Frt. Pass. 173 173 173 173 173 173 173 173 173 173	Average 18 78 14 82 16 83 19 41 20 70
	1942	Frt. Pass. 77 78 88 88 88 77 77 88 88 88 88 88 88	2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
	1941	Frt. Pass. 068 1166 688 1168 77 207 77 1286 77 1286 77 1286 77 1286 77 1286 77 1286 77 1286 77 1288 70	1941 22 3.6 22 3.6 22 3.6 22 3.6 22 5.1 20 50 130
Ratios . Kentucky ling)	1940	Frt. Pass. 63 218 64 25 177 132 77 134 77 134 71 134 71 151 71 151 71 151 71 151 71 151 71 151 71 151 71 151 71 151 71 151 71 151 71 151 71 71 71 71 71 71 71 71 71 71 71 71 71	19 19 19 19 19 19 19 19 19 19 19 19 19 1
seenger Outgo Operating in I	1939	Frt. Pase. 63 226 62 148 81 206 76 128 72 163 70 132 70 149 on. Chair Car, (10	18 19 19 19 19 19 19 19 19 19 19 19 19 19
reight and Pass I Railroads (Petitioners i	1938	Frt. Pass. 65 233 65 138 83 195 76 126 74 164 80 138 74 133 72 150 erce Commiss. 65 Parlor and fet Revenue particular Oper.	1938 13.94 12.24 13.50 13.72 13.38 15.67
<b>-</b> 5	1837	Frt. Pass. 60 207 63 112 83 138 77 120 77 120 77 120 77 124 72 138 76 124 72 138 terstate Commercial Commercia	1937 15.37 19.02 14.31 15.21 14.57 16.86 16.89
	1936	Frt. Pass. 55 203 66 113 77 139 77 139 77 139 77 124 67 143 67 14	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
	Roads	Ches. & Ohio 55 C N O & T P 60 G M & O 78 III. Cent 77 L & N C & St. L 79 Southern 67 Source: Reports of Carriers (fol. 2714) (102) Passenger,	Ches. & Ohio Ches. & Ohio Ches. & Ohio Ches. & Ohio Ches. Ch

				•			
(103) Be	103) Baggage, (106) Mail,	fail, (107) Expr	(107) Express and (109) Milk Revenue per Railroads Operating in State of Kentucky	filk Revenue p	er Car Mile (Cents)	ents)	
		(Petitioners in This	s in This Proceeding	eding)	1		
1936	1937	1938	1939	1940	1961	1942	Average
	20 22	27.26	. 28.72	28.75	28.20	30.18	20.02
	27.66	25.85	98.97	26.01	25.22	26.57	2.92
	24.95	25.88	26.00	24.27	26.76	28.28	38
	18.53	18 67	18 21	19.37	38	100	20.00
	20.22	888	20.02	20.00	25.00	20.05	28.28
31.20	28.2	200	88.86	22.85	28.76	31 21	80.80
	21.10	30.00	8			+	
27 54	26.20	25.46	25 35	25.27	25.96	28.44	26.34
100	95	92	85		ま	103	8
Source: Annual Reports to Intersta	te Commeree	Commission.				al a	•
						in .	
				Las Other the	n Commitation		
11	Kevenue per	Revenue per Passenger Mile (Cents) — Coaches (Cure Class I Railroads Operating in Kentucky	ds Operating in	Kentucky	in Commission		. 6
		(Petitioners in	rs in This Proceeding	eding)			
Roads	1937	1938	1939	1940	1961	1942	Average
	1 688	1 701	1 730	1.520	₩ 2552	1.771	1.689
	1.480	108	1.347	1.288	1.363	1.638	1.500
	1.546	1.683	1.547	1.548	1.620	1.978	1.073
	1.543	1.738	1.593	1 565	040	1 570	200
	250	2000	1 403	1 490	1 464	1 540	283
	1 347	824	1 345	1.291	1. 423	1.600	209 1
	-	1			-	1	1
	1.517	1.772	1.482	1:437	1.506	1.686	1.587
· Includes V & M V.							
Source: Form APT rendered to I C 6		.\					
					.1		

	1292	8	<b>40.</b> 5	• 1		
		Avera 2.71	782 283 283 283 283 283 283	2.421	Average 88 82 82 82 82 82 82 82 82 82 82 82 82	30.21
		1942 2.822 2.601	2 - 2 - 2 - 2 - 2 - 2 - 2 - 2 - 2 - 2 -	2.367	2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2	52.02
	ing Cars	1941	2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	2.333	Cents) 191 282 283 283 283 283 283 283 283 283 283	29.41
	rior and Sleep Kentucky ling)	2 628 1 769	24 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	2.294		22.66
	(Cents)—In Parlor and Sleeping 8 Operating in Kentucky in This Proceeding)	2.647 2.471 2.471	2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	2.396	14ation) Per C Perating in K This Proceedi 1939 19.66 20.18 19.11 29.54 16.55 18.73	21.12
4	Passenger Mile (C Class I Railroads ( Petitioners in	1938 2.673 2.439 1.962	2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	2.346 Commission	r than Commer to Railroads (Petitioners in 1938 20.52 20.21 30.50 117.10 118.80	8
	evenue per Pa Cla	1937 2.868 2.368 1.635	2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2		Revenue (Other th Class I 1937 25 20 113 25 20 113 25 20 113 25 20 113 25 20 113 25 20 113 20 30 113 20 37 113 20 37 113 20 37 113	
n	8 °			d to Intersta		
		Koads		*Includes Y & M V. Source: Form APT rendered to	Roads	Includes Y & M. V.
[fol. 2717)		CAO CAO CANO CANO TO	L&NC&St. L. Southern	* Includes Y & M V. Source: Form APT R	[fol. 2718]  C & O C N O & T C N O & T C N O & S C N O &	Includes Y & M. V.

[64] 97101	1.		2		1		
	Revenu	e Per Sleeping as ass I Railroads ( Petitioners in	and Parlor Car Operating in Kon This Proceedii	Mile (Cents) centucky ing)			
Road	1937	1938	1939	1940	1861	1942	Average
CACO	19.78	17.59	17.62	17.98	22 46	39.85	28
CM & O	5.27	22	5.4	4.10	8.53	22.16	69.6
Len	8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	18 79	7.5 2.5 2.5 3.5 3.5 3.5 3.5 3.5 3.5 3.5 3.5 3.5 3	17.41	22.20	31.48	20.83
N C & St. L	16.82	18.00	17.48	17.22	88	52.29	25.44
Conception	71.14	20.92	76.97	20.02	32.84	63.15	35.68
Total	21 63	20.59	20.63	20.32	25.08	47.17	27.25
· Includes Y & M V.							
Source: Form APT rendered to I	nterstate Commerc	e Commission.					
[fol. 2720].		0 2					
	Total Class I R	al Railway Tax Railroads Open	Accruals (Acco	unt 532) of Kentucky		0	
1.		(Petitioners in	This Proceeding	(90			
Rosd · 1936	1937		1939	1940	1941		Average
Ches. & Ohio. \$13,318 CNO&TP 1.330	.039 <b>\$</b> 12,790.		296	241.	678	808	
G M & O.	704 [ 217.	321	37	3	495	69	
9	087 7.716.	8 =		32	212	38	
NC & St. L. Southern. 5.892.	304 7 069	7 369 019	234	1,100,371	1,855,540	6.047.943	1,611,238
\$36	515 \$37.	\$38,980,182	\$41,868,797				\$65,462,674
Source. Reports of the Carriers to	Interestate		011	190	TOP .	\$	707
source, meloure or one carriers to	the Intervate Cor	nmerce Commiss	non.				,

[fol. 27216]

Rose   19   19   19   19   19   19   19   1	1936 161,241 168,090 1,829,159 1,307,787 1,400,676 \$6,014,705 \$6,014,705 100 100 100 100 100 100 100 100	1937 209-1,658 209-1,658 1,560,473 1,498,428 1,840,445 1	1938 1,253,632 251,383 1,255,736 1,925,736 1,925,736 1,930,708 1,930,708 1,930,708 1,930,708 1,930,708 1,930,708 1,930,708 1,930,708 1,930,708 1,938 1	This Proceedin 1939 1, 190, 161 401, 248 180, 227 1, 561, 801 227, 632 1, 810, 427 87, 293, 737 121 oh. This Preceedin 1939 109 110 110 110 110	1940 1940 287, 235 205, 136 1, 910, 224 1, 635, 860 1, 961, 963 1, 465, 129 77, 405, 129 77, 405, 129 77, 405, 129 1940 1940 1111 1111 1111 1111 1111 111	1941 277,263 200,655 2,280,884 1,716,511 1,926,381 11,9	\$1,562,342 1,186,214 1,186,214 1,186,214 1,087,838 5,450,546 1,087,832 8,912,325 1,087,832 1,087	Average \$1,224,512 383,490 186,127 1,968,011 2,118,890 337,225 2,826,132 29,054,357 109 112 112 113 110 110 1118	
Average	001	103	110	100	601	911	121	==	
Source: Annual Reports to Inte	to Interstate C	omnierce Com	nission.						

88788188

Porest Products	A	October 1936 = 100  Four Southern District Roads*	1	e:
Porcest Products   100 0   105 0   94 4 1   100 1   120 1   100 1   105 0	-0	Oct. 1, 1936 Dec. 1, 1937 Dec. 1, 1938 Dec. 1, 1939 Dec. 1, 1940 Dec.	1, 1941	
Miscellaneous Products   100 0   106 1   105 5   108 2   104 9     Cotal (excl. Fuel)   100 0   103 0   107 8   110 5   110 1     Fuel (cosal and oil)   100 0   108 0   107 8   110 6   113 1     Total (incl. Fuel)   100 0   108 0   107 8   110 6   113 1     Total (incl. Fuel)   100 0   108 0   107 8   110 6   113 1     Total (incl. Fuel)   100 0   108 0   107 8   110 6   113 1     Louisville & Nashville & Nas	-	Forest Products 100.0 105.0 94.4 106.4 126.1 170.0 170.0 113.5 115.1	20.5	
Ohio  Ohio  Ohio  Ohio  Igo 0 108 6 110 8 110 7 110 1  Ohio  Ohio  Igo 0 108 0 107 8 110 6 113 1  Sahville  Way  Late furnished by carriers to Bureau of Railway Économice, Association of American Railate furnished by carriers to Bureau of Railway Economice, Association of American Railate furnished by carriers to Bureau of Railway Economice, Association of American Railate furnished by carriers to Bureau of Railway Economice, Association of American Railate furnished by carriers to Bureau of Railway Economice, Association of American Railate furnished by carriers to Bureau of Railway Economice, Association of American Railate furnished by carriers to Bureau of Railway Economice, Association of American Railate furnished by Carriers for the following following for the following followin		Miscellaneous Products. 100.0 106.1 106.5 108.2 104.9	23.6	
Ohio  Ohio  Ohio  I 100.0 108.0 107.8 110.6 113.1  ashville  way  lata furnished by carriers to Bureau of Railway Économice, Association of American Railata furnished by carriers to Bureau of Railway Économice, Association of American Railata furnished by carriers to Bureau of Railway Économice, Association of American Railata furnished by carriers to Bureau of Railway Économice, Association of American Railata furnished by carriers to Bureau of Railway Economice, Association of American Railata furnished by carriers for Info 66.130 1918    Parity   Parit		100.0 95.6 110.8 110.7 110.1	23.9	
supeake & Ohio  ols Central sville & Nashville hern Railway  ted from data furnished by carriers to Bureau of Railway Economics, Association of American Railway  ted from data furnished by carriers to Bureau of Railway Economics, Association of American Railway  ted from data furnished by carriers to Bureau of Railway Economics, Association of American Railway  Roads  1916 1917 1918 1919 1919 1919 1919 1919 1919		100 0 108.0 107.8 110.6 113.1	122.8	
aville & Nashville lern Railway  ted from data furnished by carriers to Bureau of Railway Economice, Association of American Railway  ted from data furnished by carriers to Bureau of Railway Economice, Association of American Railway  Therefore Train Mile  Class I Railroads Operating in Kentucky  (Petitioners in This Proceeding)  Roads  1916  1916  1917  1918  1919  191	-	• Includes: Chasapenke & Ohio		
Roads		Illipois Central		
Revenue Passenger Miles Per Train Mile  Class I Railroads Operating in Kentucky (Petitioners in This Proceeding)  Roads  1916 1916 1917 1918 1919 1919 1919 1919 1919 1919		Louisville & Nashville Southern Railway		
Roads Class I Railroads Operating in Kentucky (Petitioners in This Proceeding)  (Petitioners in This Proceed		Source: Computed from data furnished by carriers to Bureau of Railway Économics, Association of American Rai	lroads.	
Roads   Revenue Passenger Miles Per Train Mile     Class   Railroads Operating in Kentucky     Petitioners in This Proceeding     1916   1917   1918   1919     1916   1917   1918   1919     57.94   67.30   95.85   91.08     58.34   67.30   95.85   91.08     52.47   53.56   62.86   82.86     52.47   53.67   62.86   82.86     52.44   65.57   91.19   74.57     51.97   62.48   80.73   74.92     51.97   62.48   80.73   74.92     51.97   62.48   80.73   74.92     51.97   62.48   80.73   74.92     51.97   62.48   80.73   74.92     51.97   62.48   80.73   74.92     51.97   62.48   80.73   74.92     51.97   62.48   80.73   74.92     51.97   62.48   80.73   74.92     51.97   62.48   80.73   74.92     51.97   92.86   92.86   92.86     52.86   93.86   93.86     53.86   93.86   93.86     54.86   93.86     55.86   93.86	-	27241		
Roads 1916 1917 1918 1919 1916 1917 1918 1919 1916 1917 1918 1919 1917 1918 1919 1917 1918 1919 1918 1919 1919				
Roads 1916 1917 1918 1919 1919 1919 1919 1919 1919		(Petitioners in This Proceeding)		
57.94 67.30 95.85 91.08 58.34 86.02 111 43 82.62 37.01 36.56 41.55 42.59 52.47 57.67 62.86 88.28 52.44 65.12 82.68 80.07 45.87 65.52 90.51 74.57 49.28 66.57 91.19 76.31 51.97 62.48. 80.73 74.92		6161 8161 1615	1920	
28.34 86.02 1111 43 82.62 82.62 82.62 82.62 83.7 01° 36.56 41.55 42.59 82.62 86.72 86.72 86.72 86.72 82.68 80.07 45.87 65.52 90.51 74.57 49.28 66.57 91.19 76.31 51.97 62.48. 80.73 74.92 80.73 74.92 80.73 74.92 80.73 74.92		57.94 67.30 95.85 7.91.08	74.07	
37 01 36 36 48 28 68 28 68 28 68 28 68 28 68 28 68 28 68 28 68 28 68 28 68 28 68 28 68 28 68 28 68 28 68 28 68 28 68 28 68 28 68 57 69 119 76 31 62 48 80 73 74 92 62 48 80 73 74 92 62 48 80 73 74 92 62 48 80 73 74 92 62 48 80 73 74 92 62 48 80 73 74 92 63 63 64 64 64 65		58.34 86.02 111 43 82.62	88.38	
12 44 65 12 82 68 80.07 45 87 55 52 90 51 74 57 49 28 66 57 91 19 76 31 51 97 62 48. 80 73 74 92 64 64 65 11 67 62 68 57 91 19 76 31 62 68 57 91 19 76 31 62 68 57 91 19 76 31 62 68 57 91 19 76 31 62 68 57 91 19 74 92 62 68 57 91 19 74 92 62 68 67 91 19 19 19 19 19 19 19 19 19 19 19 19		57.01 30.00 41.00 42.08	18	
145.87 55.52 90.51 74.57 74.57 49.28 66.57 91.19 76.31 51.97 62.48. 80.73 74.92 14.92 62.48. 80.73 74.92 14.		52 44 65 12% 82 68 80.07	78.77	
ude Gulf. Mobile & Northern—not listed in Blue Book.		45.87 55.52 90.51 74.57	68.52	
Blue		51.97 62.48. 80.73 74.92	70.77	
C. C. Ottalian of Daily one in the United States.		* Does not include Gulf. Mobile & Northern-not listed in Blue Book.		
		D. C. C. Charles of Dailbeans in the Philips Contact		

Dec. 1, 1942 165.2 120.8 116.5 128.7 126.3

G M & O P 6 8 9 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	1921 63.22 68.15 56.23 56.23 56.23 56.43 57.51 11ways ir	1922 28. 14. 20. 11. 20. 11. 25. 38. 21. 76. 27. 21. 25. 18. 35. 18.	9 - 0	Hass I Railroads C (Petitioners in 1924 60.63 - 55.62 82 50 71:18 53:62 26:29 65:72 22 55:29 61:92 57:11 59:30 . 54:62 84:87 61:92 57:11 59:30 . 54:62 84:87 61:92 57:11 61:92 57:11 61:92 57:11 61:92 57:11 61:92 57:11 61:92 57:11 61:92 62:90 64:62 62:90 62:90 62:90 62:90 62:90 62:90 62:90 62:90 62:90 62:90	This Process 1925 49.92 69.92 69.92 53.84 53.80 48.31 55.55 55.98 7.86 59.98 7.86 59.98	Price Proceeding)  1925  1926  1926  1926  1926  1926  1926  1928  27.83  53.84  54.23  53.89  50.89  44.44  55.55  54.07  59.98  51.34  Miles per Train Miles	7201 7201 7201 7202 7202 741 741 741 741 741 741 741 741 741 741	25 12 25 25 25 25 25 25 25 25 25 25 25 25 25	28. 59. 50. 50. 50. 50. 50. 50. 50. 50. 50. 50	36. 53 36. 53 36. 53 37. 54 37. 72 37. 72 37	A 7 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	96
Roads LTP	1931 22 42 29 73 11 62 43 78	1932 16.47 26.10 14.75 42.79	(Pe 1933 21 4 39 9 17 2 54 6	1934 1934 27.8 45.3 17.3 17.3 25.0	This Proce 1935 27.5 44.4 18.3 18.3 47.0	eeding) 1936 34.4 59.0 21.7 53.1	1937 222 8 47 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	85 188 1988 8 0 2 8 4 1 2 8	1939 33.1 54.7 17.7 57.3	38.0 38.0 17.2 17.2 4.7		
L & S. E. L & 26 Southern Total 30 1921–1940 1916–1940 1942	30 10	25.19 27.78	888 88	38.7	88 77	27.64   4. 0.08   8	46.6 48.3	30.55	24 8 0 8		825 8 825 62550	1

	Yearly Average 88.5. 125.9 35.7 94.2 109.6 108.5	8 8	Average 19.72 18.22 15.93 17.34	1297
	JanApr. 1943 Yearl 142. 1 171.0 66.4 146.4 192.2 181.0	162.5.	1920 19.92 18.10 16.87 19.83	17.37
			1919 21.02 17.62 16.50 18.50 20.59	19.60
per Train Mile g in Kentucky occeding)	1942 101.8 145.9 145.0 105.1 121.8 122.0 145.0	119.7 per Car Mile	Pais Proceeding) 1917 1918 18.04 22.85 17.95 23.57 16.66 15.91 16.84 20.82	
Revenue Passenger Miles per Train Mile Class I Railroads Operating in Kenfucky (Petitioners in This Proceeding)	1941 8 1 6 8 2 6 8 6 9 8 5 5 5 6 8 6 6 9	62.7 Revenue Passenger Miles per Car Mile	Class I Railroads Operating in Kentucky (Petitioners in This Proceeding) 1916 1917 191 16.09 18.04 22.8 14.02 17.95 23.5 13.82 13.82 14.22 16.84 20.8	
Revenue Class I Ra (Petit		Revenue	Class I Ra (Petit 19 16 14 13 13 13	Southern.  Total.  Total.  Oose not include, Gulf, Mobile & Northern—not listed in Blue Book Source: I.C.C. Statistics of Railways in the United States.
	7	d to i.c.c.		Southern.  Total  Does not include, Gulf, Mobile & Northern—not listed in Source: I.C.C. Statistics of Railways in the United States
	P Road	Total  * Includes Y & M V.  Source: Form OSD rendered t  [fol. 2728]	Roads	nelude, Gulf, M.
[fol. 2727]	C. C	Total  Includes Y & M V Source: Form OSD   [fol. 2728]	C & O C C C C C C C C C C C C C C C C C	N C & St. L. Southern Total Does not it

[fol. 2729]

	٥.	lass I Ra	ilroads Or	erating in	Kentucky					
Roads 1921	1922	1923	1824	1925	1926	1927	1928	1929	1930	Average
96		16.13	14.29	12.73	12.13	11 21	0 77	0 36	2 00	19 41
12.88		15.53	13.61	12.31	10.01	10.03	9 72	31	60.9	11 21
M & C		12.43	10.98	10.45	9.70	8.72	7.68	7 74	90	08.0
14.93	٠,	14.89	13.57	13.25	12.85	13.33	12.82	12.85	28	12.45
69 21		15.41	14.07	12.76	11.86	11,30	10.33	0 34	7.60	19 17
20		13.37	12.57	12.16	11.38	10 98	100	80	1.10	07
uthern		14.98	13.60	13.00	12 37	11.61	10.95	10.25	8 30	12 40
00	4	100	100			1	-			
14.00		15.02	13.63	12.84	12.17	11.77	10.11	10.46	8.79	12.47 °
Source: I.C.C. Statistics of Railways in the	United	State.								
[fol 2730]			V					-		
o o		Revenue	Passenger	Miles per	Car Mile					
		land I Da								
	<b>.</b>	Petiti	ohers in I	erating in his Procee	Kentucky ding)					
		1033	1034	1094	1000					
		1000	1901	1800 %	OORI	183/	1958	1939	1940	Average
		5.2	6.3	6.1	8.6	9.2	8.2		8 6	7.1
			30.00	8.9	10.5	11.2	8.9	10.2	-	0
		7.6	7.3	6.7	11.6	11.8	8	200	00	0.00
-	0	3.5	13.2	9.11.	12.4	13.7	12.7	13.1	200	19.61
6.15	5.92	6.7	. 8.3	9.1	10.1	10.4	96	9.2	200	000
		6.6	8.0	8.6	8.6	10.1	7.9	8.0	8	90
		1.7	0.0	4.6	11.2	11.11	8.9	10.3	11.1	0
		8.00	9.4	9.4	6.01	11.4	9.6	10.4	11.11	
1916-1940			****							11.2
76										13.1
1942										14.8
		9 1 1 1		4						23.9
Source: I. C. C. Statistics of Kailways in the	e United	States.	20							

Jan - Apr. 1943 Yearly Average		19.0 14.1 25.7 20.9 32.6 21.4	0%4				1943	31.65	39 5 30 98 22 23 39 27 71 16 13	2 % 8 % 8 %	1299
Class I Railrolds Operating in Kentucky (Petitioner in This Proceeding)		10.1 15.4 16.6 22.7 13.3 22.8			Passenger Miles per Coach Mile	Class I Railroads Operating in Kentucky (Petitioners in This Proceeding)	1939 1940	14.99 17.67 12.35 12.15	17 55 18 55 20 17 23.	14.23 16.23	
Roads 6	CAOCTP	G M & O 1 C 1 & N	N C & St. I. Southern Total	• Includes Y & MV. Source: Form OS-D rendered to I. C. C.	[fol. 2732]		Roads 1937	CNO&TP 4 15.33	1 C C 20 52	Southern 14.08 Total 15.60	• Includes Y & MV. Source: Form APT rendered to I. C. C.

Revenue Passenger Miles per Car Mile

Mile
Car
Parlor
and
Sleeping
Per
ger Miles
Passen

2 288 2 288 8

Source: APT Reports rendered to ICC.

Exhibit No. 7
I. C. C. Docket 29000—Witness: J. E. Marks
Ky. R. R. Commission

Winchester 35 33 44 65 60 80 80 80 2.80 4.10 80 8.27 2.27 2.80 2.80 4.10 Hazard 2.20 2.30 3.23 4.00 4.15 5.85 Frankfort 85 85 83 1.06 1.55 1.55 2.15
--

[fol. 2735]

EXHIBIT NO. 8

Hearing Before Kentucky Railroad Commission at Frankfort, Kentucky, May 14, 1943 Processed Passenger Fares and Charges Between Points in Kentucky Suspension Order No. 29 Witness: J. E. Marks

Frankfort, Ky.-May 11, 1943

Table I—Average Miles of Road Operated by Class I Kailroads in Kentucky in 1942.
(Note—Does not include B. & O. C. I. & L., Clinchfield, N. Y. C., N. & W., and Penn. R. R.). Table II.—Passenger Revenues—Kentucky Intrastate—L. & N. and C. & O.—Years 1935 to 1942, inclusive.

The Following Statistics Cover Kentucky Intrastate and Interstate Traffic of the L. & N., I. C., C. & O., C. N. O. & T. P., and Southern Railway for the years 1935 to 1942, inclusive. otal Passenger Mil Passengers Carried

evenue per Passenger Mile evenue per Passen

[fol. 2736]

100.00

3574.77

100 00

3260.98

Grand Total.

Table I-Average Miles of Road Operated in Kentucky during 1942 by Class I Railroads Shown Below.

assenger Trains	TOTAL TER	nsportatio
	I A	Per Cent of Total
		. 51
		2.2
1.43		
	3454.23	96.63
78 1 32 76 1 83 00• 55	42.78 59.76 18.00	1.20 1.67 50
54 3.70	120.54	3.37
	Miles Per Cent 17 1 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	Per Cent of Total 51.33 17.29 18.62 6.07 2.99 96.30 1.32 1.83 55

Note—The L. & N., I. C., C. & O., and Southern Ry. have abandoned a substantial amount of mileage, and have discontinued passenger service on several branch lines, during recent year. .-Estimated.

Year 1987 8713.672	\$657,640	\$3,212,787 \$2,317,878 \$2,200,241 \$2,300,266 \$2,726,035 \$2,527,960 \$90,802 \$578,462 \$543,955 \$526,666 \$638,294 \$75,021 \$1,036,470 \$743,051 \$682,716 \$711,974 \$80,777 \$797,372 \$11,65,201 \$811,926 \$40,902 \$46,845 \$55,825 \$40,216	\$4.318 938 et 000 non
Year 1942 8967,966 356,394	\$1,324,360	Table III 57,060,894 1,769,407 2,348,093 2,642,549 202,403	114.023.436

	Lable 1	- Fassengers C	Arried-Lent	ucky intrasta	te and interst	931		
Railroad	Year / 1942	Year 1941	Year 1940	Year 1939	Year 1938	Year 1937	Year .	Year 1935
L. & N. I. C. C. & O. C. N. O. & T. P. Southern	3, 124, 077 1, 151, 095 1, 342, 580 846, 376 169, 476	1,902,098 739,388 723,737 420,169 95,986	1,658,499 479,607 552,920 315,179 59,404	1,706,810 436,475 444,853 280,152 56,795	1,594,814 418,348 513,178 249,381 55,718	2,218,894 520,337 759,613 345,596 78,711	2,292,652 538,488 554,870 333,579 81,731	2,129,453 418,822 419,658 280,179 80,477
Total	6,633,604	3,931,378	3,065,600	2,925,085	2,831,439	3,923,151	3,801,320	3,338,589
T.	Table V-Total	Passenger Mil	es (Thousand	)-Kentucky	Intrastate an	d Interstate		
L Constitution								130.277
C. & O. & T. P. C. N. O. & T. P. Southern	114,525 130,998 9,929	53,472 64,786 5,799	38,532 46,019 2,730	32,136 39,011 2,528	32,566 34,383 2,373	39,488	35,445	20,130 20,705 2,858
Total	723,909	369,508	256,054	230,594	208,349	279,255	265,370	220,720

				1					
	Venn	.Van	Van	Voor	Vear	· Year	Year		Year
	Lear	I Earl	Tear		-	-	,		1005
Railroad	1942	1941	. 1940	1939	1938	1937		0	1900
The state of the s				000		61 00			
	\$2.26	\$1.69	\$1.40	87.18	\$1.44	3.			
	73	1 04	1 21	1.25	1.26	1.14		1	
		67.1	1 94	1 52	1 38	1 00			
	1.75	04.1	1.04	20.1	3				
4 T D	3 12	2.77	2.58	2.55	2.84	2.55			
C. I. C. & I. I.	1 10	1 02	71	. 72	2	. 71		0	*
	1.10						1		-
							-1		
		Table IX-	Passenger Mil	es per Mile of	f Road		*		0
							.11	20	
*****************							48	88	•
	710,101	100,100	20, 430	40 267	40.086	60.610	54	808	•
·····································	-	-			-		921	10	•
). & T. P.					-			00	•
Southern					-		181		

,	Table X-Car	Miles	Passenger Coaches	ches.		1	
Year 1942. 10,543,287 2,548,772 3,739,456 2,573,316 194,538	Year 1941 8,589,468 2,642,352 2,550,452 1,933,572 148,670	Year 1940 8,175,700 2,196,654 2,203,452 1,409,832 158,018	Year 1925,867 2,042,376 2,076,564 1,316,774 155,052	Year 1938 7,765,704 1,965,269 2,108,069 1,304,509 157,005	Year 1937 8,543,827 1,974,517 2,233,817 1,519,873 186,673	Year 1936 7,965,952 2,104,761 2,049,044 1,524,596	Year 1935 8,244,532 1,960,434 2,753,546 1,629,138
19,386,360	15,864,514	14, 143, 656	13,516,633	13,300,556	14,457,587	13.820.070	
. 1	Table XI -Car	r Miles-Sleeping	ping and Parlor	or Cars.		1.	
6,145,073 1,994,404 2,505,945 1,925,532 247,060	5, 196, 353 1, 562, 920 2, 154, 944 1, 950, 938	4,837,486 1,276,144 1,968,749 1,855,157 83,708	4,530,353 1,214,968 1,868,917 1,672,281 82,107	4,712,392 1,244,890 1,843,473 1,717,464	4,765,498 1,219,387 1,847,157 1,847,157	4.816.256 1.293.093 1.906.483 1.745.169	5,004,373 1,429,294 2,129,133 1,602,059
12,818,014	11,003,176	10,021,244	9,368,626				

N. Railroad k. O. N. O. & T. P. thern		300 00000	39	Yes 1939 257 257 237	Yes 193 193 210 240 240	E 600	289 289 289 289 289 289 289 289 289 289	Year 1935 13,338,905 3,389,728 4,882,679 3,231,197 459,450
Total	32,417,383	26,867,690	24,2164,900	22,885,259	22, 902, 667	24, 180, 524	23,694,609	
		Table XIII	-Average Pa	usengers Per C	Car Mile			
\\X	22.8	13.7	10.4	10.2	9.0	11.8	8.11	. 8.6
	10.3	. 13.6	9.5	. 0.2	000	200	40	
NO & T. P	20.1	16.7	2.7	13.0		24.3	200	0.00
thern	22.5	20.5	. 11.2	9.01	9.8	12.3	9 01	6.2
Total	22.3	13.8	10.6	10.8	9.1	11.5	1 3	2.0

N			
	8		
			3
0			0
	6		
	·		9
	0		
et .	1.		
	Ξ	:	1
	=		•
3	×		4
	-		
*			
10			
ME.	1		
		:	

Ky. R.R. Commission

Various Railway Operating Statistics of Kaspondent Carriers Years 1938-1942, inclusive, and First Six Months 1943 J.C.C. Docket 29000-Witness: J. E. Marks Kentucky Intrastate Fares

Frankfort, Ky.—September 8, 1943 Table of Contents

reight Revenues assenger Revenues fail, Express, Milk and Baggage Revenues Average miles of road operated in 1942 Description

Association of American Railroads, Bureau of Railway Economics, June 1943 Mo. Report Ser. No. 406. Total Operating Revenues
Total Operating Expenses
Operating Ratio
Railway Tax Accruals
Net Railway Operating Income Authority: I.C.C. Statistical Statements 41200, 42200, 43200.

C. & O. & T. P. G. M. & O. & T. P. I. & N. I. & N. N. C. & St. L. Southern  Total Includes Y & M V R R	+ First six month	Table II-	II—Freight Rovenue	337 1969 6445 4777 1107 6519 24269			258 2010 2010 2010 2010 2010 2010 2010 201
O. & T. P.	1943 185,367,579 14,249,188	942 865.	942 942 167 736	25.52 25.52	949 923 329	25.73 83E	1938 1938 13, 146, 675 16, 458, 381
I.C. M. & O. I.C. M. & C. M. C. & St. L. M. C. M	99.64,279 75,560,495 14,735,574 86,362,674	63, 434, 740 63, 434, 740 9, 888, 764 71, 846, 540	178, 968, 303 136, 689, 523 24, 045, 988 156, 635, 034	120,471,429 104,063,091 16,257,795 116,520,375	95,915,992 85,586,937 12,906,131 88,591,660	93,521,556 76,492,009 12,173,225 82,344,875	67,605,60 11,124,72 72,950,42
Total	358	\$328,971,432	\$716,213,551	\$539,333,501	\$440,841,455	\$408,730,156	\$367,986,224
Increase over preceding period	19.6%		32.8% 94.6%	22.3% 46.6%	. 7.9%	11 0%	11

1312		938 908 132, 095 132, 095 615,880 958, 084 199, 037 786, 241	36,944		1
	. ;		\$30,836,		
		Year 1939 83,062,151 1,110,893 551,657 9,529,182 6,013,271 1,078,102	\$30,087,116	-2.5%	
•	**	1940 1, 268, 543 1, 268, 543 532, 344 9, 943, 009 6, 474, 811 1, 163, 813 9, 177, 690	\$31,931,560	6.1%	-5-
evenues		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	\$44,768,418	40.2%	
Table III—Passenger Revenues		1942 811, 493,584 4,206,668 1,361,108 22,531,696 23,288,244 4,654,317 36,265,338	\$103,800,955	131.9% 236.6%	
Table I	months	1942 83, 980, 140 1, 453, 504 466, 511, 9, 000, 840 8, 481, 765 1, 435, 420 12, 862, 648	\$37,617,828		* *
	Trirst six months	1943- 169, 134, 546 3, 087, 940 1, 282, 510 16, 876, 035 22, 014, 638 3, 929, 360 27, 225, 669	\$83,550,668	122 1%	•
[fol. 2748]		C. & O. & T. P. C. N. O. & T. P. G. M. & O. L. & N. N. C. & St. L. Southern	Total	Increase over 1938.	-Includes V & M V R R. T-Accounts 102 and 122.

S & T. P. & O. F. F. P. F.	Mail and Exp 1942 81,829,023 773,562 358,101 5,281,368 4,579,906 1,376,445 6,338,807	\$1,541,183 677,293 421,829 4,630,737 3,863,535 1,081,025 5,527,439	Year 1941 1941 1941 695,304 440,931 4,769,195 3,958,119 1,110,882 5,617,406	Vear 1940 81, 559, 883 651, 390 429, 495 4, 410, 634 3, 694, 129 1, 040, 953 5, 342, 515	Year 1939 \$1,559,375 637,011 458,509 4,563,108 8,712,159 1,029,571 5,327,491	Near 1938 1938 1938 1938 1944 1735 1944 117 1944 151 1944 151 1944 151 1944 151 1944 151 1944 151 1944 151
tal	\$20,437,212		\$18,212,228	\$17,128,989	\$17,287,224	.\$16,672,926
ncrease over preceding period	15.2%		6.3%	-0.9%	3.7%	-

Table IV-Mail, Express, Milk and Baggage Revenues

[fol. 2749]

-Inclusion of milk and baggage should increase this to a Jout 25.8%. . Includes V & M V R.R.

	Year Year 1940 1939 1946 1832,720,172 \$118,722,054 592 18,320,382 17,788,489 226 114,266,410 111,370,852 572 98,001,627 88,348,256 767 15,632,663 14,827 811 105,905,395 99,153,560	871 \$503,547,801 \$468,871,857	7.4% 9.7% 17.8% 9.7%
, merendes	Year 1941 22,621,5 23,647,8 342,438,3 119,569,5 19,668,7 139,926,42	\$618,109,87	22.7%
	Year 1942 30,697,673 33,173,151 213,026,422 168,824,550 30,928,868 204,605,581	\$863,066,006	39.6%
months	1942 864,160,380 13,715,307 14,480,979 65,675,928 75,729,999 12,329,090 80,875,646	\$365,967,329	11
First six	1943 897, 982, 469 18, 142, 985 19, 282, 435 123, 456, 602 103, 085, 736 20, 075, 529 120, 669, 725	\$502,695,431	37.4%
			nerease over preceding period nerease over 1938.

THEIR I OF M V II

84455888 \$300,099,148 76,446, 10,052, 13,425, 76,624, 61,008,7 10,947,8 \$319,947,279 Year 1939 10,924, 10,924, 13,862, 81,646, 64,989, 11,648, 68,009, \$342,683,010 8827888 Year 1940 11, 252 14, 298 85, 966 72, 657 72, 657 72, 870 \$391,925,558 299 386 386 523 666 815 815 313 313 30.6% Year 1941 13,078 13,078 16,126 101,729 78,076 14,128 88,547,3 \$504,300,642 28.7% 8588895 25.55.85.55.88 25.55.85.55.88 \$235,959,500 1942 8,074;8 9,372;6 47,017; 8,985; First six months. 52,945,248 9,365,427 11,748,019 79,838,644 56,701,677 12,140,613 63,305,903 \$286,040,531 Increase over preceding period -Includes Y & M V R R.

Table VI—Total Operating Expenses

[fol. 2751]

	Pirat six	months	T.	Vene	Voor	Vene	Year
	1943	1942	1942	191	0761	1639	1938
0	54.0	72.1	. 52.5	53.4	. 55.8	58.0	90.6
O. & T. P.	51.6	58.9	2.0	57,8	61.4	4.19	0.92
	3	2.5	62.3	187	15.0	120	22
		625	78.7	65.3	73.5	73.6	76.8
	90.2	72.0	63.6	71.8	77.7	78.6	1.08
E.	52.5	60.5	55.6	63.3	8.89	9.89	1.17
Kvernen	00 5	64.0	188	2	68.0	68.3	2.2
Includes Y & M V R R.							
[fol. 2753]							
		Table VIII	I-Railway Tax	Accruals			4
	Federal Income	ome only	Vans	Vene	Veer	Vany	Voor
	1942	1961	267	1961	1940	1939	1938
	254	19,337,414	98	678	241	296	
0. & T. P.	7,114,000	2,219,000	8.896.710	3, 755, 992	2.227.001	1.813.772	1.505.488
<b>6</b> 0	98	1 018 021	100	. 4	Š	32	
	158	9.442.677	2	212	9	35	
& St. L.	535	759.305	EZ.	855	8	8	
Southern	325	5,910,600	88	552	30	7,814,553	
Total	\$131,801,252	\$29,444,853	\$184.976,119	\$74.984.452	\$51,835,296	\$43,504,076	\$40,503,212

. Includes Y & M V R R.

17.348,286 17.979,626 46,265,818 32,789,981 21,457,294 \$78,241,371 \$66,457,303 \$167,173,888 \$148,729,547 \$104.48	C & S C C C & S C C C & S C C C C & S C C C C	1943 \$18,065,537 2,917,480 2,525,244 21,271,090 13,178,430	1942 1942 2,215,978 2,217,877 16,837,687 10,025,684 11,600,383	Year 1942 830,643,584 5,222,964 5,648,668 40,967,856 23,732,085 5,772,085	Year 1941 55, 559, 186 5, 958, 047 3, 661, 460 25, 548, 223 25, 548, 223	Year 1940 817,746 4 998,100 1,505,525 16,759,150	Year 1936 1936 1936 5, 185, 059 2, 154, 857 17, 813, 128 15, 848, 660
200 500 5101 173.888 8148 729 567 6104 48 no.		348	879	28.	780	55	1,982,653 20,521,866
100 COL	Descending			. 173	\$148,729,567	E	\$99,860,361

-Includes Y & M V R R.

EXHIBIT NO. 10

I. C. C. Docket 29000-Witness: J. E. Marks

Ky. R. R. Commission

83,177,117 101,536,374 681,224,732 456,038,321 94,667,732 (£90,029,744 Summary of Property Investment and Operating Income Account (Partially Estimated) of Respondents for Years 1938-1943, Inclusive \$562,925,776 82,918,367 99,368,743 668,100,150 455,178,454 93,424,332 598,260,852 \$2,656,160,858 (2,560,176,674 (@95,984,184 \$2,673,007,466 \$2,607,355,577 @117,577,667 \$2,724,933,244 #\$2.607,355,577 #\$2,607,355,577 @183,363,713 @15),290,193 \$2,758,645,770 \$2,790,719,290 Cash, Materials and Supplies. .- Includes Y & M B R R. Investment in Railway roperty Investment property, viz:

Authority: I. C. C. Statistical Statements 41200, 42200. @-Estimated 30 per cent of total operating expenses.

#-Estimated same as 1941.

Year 1938 \$427,451,513 300,099,148 70,2 126,352,365 40,503,212	6,809,725 79,039,428 2,97	
Year 1939 \$468, 871, 857 319, 947, 279 68, 2 148, 924, 578 43, 504, 076	5,560,141 99,860,361 3.76 2.25	
Year 1940 \$503.547.801 342.683.010 68.8 160.864.791 51.835.296	4,229,261 104,800,234 3 92 2 59	
Year. 1941. 391,925,558 63,4 226,184,313 74,994,482 29,444,853 45,549,629	2,460,264 148,729,567 5,46 3,75	178,174,420
Year 1942 504,300,642 504,300,642 58,4 358,755,364 184,976,119 131,801,252 53,174,867	6,605,357 167,173,888 6.07	298,975,140
Year 1943 *\$1,185,852,792 *611,212;378 574,640,414 #371,271,391 @304,509,292 66,762,099	.9%6,605,357 *196,763,666 7,05	ie. 501,272,958 298,975,140 178, in- 17,96 10,84
Operating Income Account Total operating revenues Total operating expenses Operating ratio—per cent Net operating revenue Railway tax accruals Federal income taxes All other taxes	Equipment and joint facility rents. Net railway operating income. Rate, of return to total in- vestment—per cent. Average for Class I R. R.'s	Before Federal Taxes Net railway operating income. Rate of return to total investment—per cent.

perating revenue, 1943 over 19-Same rate of increase over 1942 as first half of 1943 over first half of 1942.
 — Difference between Net operating revenue and sum of Rents and Net railway operating income.
 — 1942 Federal income taxes increased by 80 per cent of increase in net operating revenue, 1943 over 7%—Estimated same as 1942. Ехнівіт No. 11

[fol. 2757]

I. C. C. Docket No. 29000-Witness: Paul Tanner

Franchise tax Accruals Total Income and \$948,735,42 1,038,139.87 1,362,732,59 1,149,103.22 \$4,498,711.10 \$1,124,677,77 Statement Showing Elnal Assessments of Petitioners Properties in Kentucky for State and Local Taxes for the Years 1938-1941, Inclusive, also Kentucky State Income and Franchise Tax Accruals for the Years 1939-1942, Inclusive \$640,653.35 644,447.13 689,226.30 708,453.98 Franchise tax \$2,682,780 76 \$670,695,19 Accruals \$308,082.07 393,692.74 673,506.29 440,649.24 Income tax Accruals \$453,982.58 \$1,815,930.34 Com. of Kentucky \$229,122,492 229,506,648 238,289,621 241,919,599 Incomplete 938,838,360 Assessments 1234,709,590 Final

Average

		s. En	26
1	1	% Inc. 12 Mos. En 6/30/43 over	688
		% In	1936-1939 Average
8			
ome Tax			1942
tnock rai Inc	ntuck		1.
2. s: Whi	g in. Ke	(spuesi	194
Docket No. 29000—Witness: Whitnock av Operating Income Before Federal Inc	Selected Railroads Operating in Kentucky 1936-1942-43	(Dollar figures in thousands)	1939 1940 1941 1942
EXHI t No. 2900	I Railroad	Dollar fign	6861
Docket No. 29000—Witness: Whitnock Net Railway Operating Income Before Federal Income Taxes	Selecte	Ĭ	1937 1938
. 2			
			193
			1936
	*		
		-	Railroad
158			Rai

	6
	•
	-
-	
	•
-	
1.	2
. 0	=
3	3
ing Ra	-
.5	Operating in Ken
ice Operatin	-5
- 5	
0	Ž.
.5	
ght Service Operating	cted Railroad
ht Ser	3
£	3
· इ	=
G	\$
	3
1	3
	1
*	
•	

Changes 1942 (	1936-1939	Average - 2.1	1.2	110.3	1.3	
Estimated 1st	6 Months	50.0	51.1	25.00	. 54.2	
tucky	1942	18.7	8.2	55.9	2	24.0
g in Ken	1	48.4	6 25 20 25 20 20 25 20 2	58.5	8.70	. K7 A
de Operatin 1936–1943	1940	50.4. 48.4	67:1	25		67 0
Railroad	936-1936	50.8	65.5	28		58.7
Selecte	. 1830	52.2	65.55	28		58.1
	1938	54.1 52.2	64.6	62.2		60.3
	1837	51.3	67.2	65.4		8
	1936	16.7	2.7	61.7		26.6
	Kailroad	NO & T. P.		outhern	Southern Roads:	Total

Compared with 6 Months 1943

Chesapeake & Ohio R.R. Clinichfield R.R. Cincinnati, New Oricans & Tex. Pac. R.R.

See Appendix for method of estimating 1943 freight operating ratio.

Includes the Yazoo & Mississippi Valley R. R.

Valley R.R. Cos. data in annual reports of the carriers to the I. C. C. busis explained in Appendix. Source: Years 1936 through 1942 has Six months of 1943 estimated

Estimated 1st Changes 1942 compared with 1936-199 Six Months 1943 Average 1943			7.4			
ompared wit	Six Month	+17.6	+19.6	9.0		+10
Changes 1942 o	1936-19 Average	0.08-	-29.0	-65.0		- 27.1
Estimated 1st	6 Months 1943 1	20.4%	7.50	52.7		0.10
	1942	94.0%	55.0	220		75.2
	1941 1942	158.3%	18.2	118.9	2	118.5
1800-1940	1940	187.3%	126.7	14.0		126.8
3	1936-1939			137.0		
	1939	191.7%	117.7	142.0	116.0	135 5
	1938	196.2%	116.6	134.3 142.6	115.4	125.2
	1937	183.1%	0.90	134.3	100.0	197 K
	1936	174.3%	116.0	20.8	9.111	101
	Railroad	040	C. N. O. & T. P.	L & N	Sou.	10 Southern roads:

Selected Railroads Operating in Kentuc Passenger Service Operating Rat Docket No. 29000 EXHIBIT NO. 14

Chesapeake & Ohio R.R. Jinchfield R.R. Cheinnati, New Orleans & Tex. Pac. RR.

ě		
ĕ	i	į
ě	į	į
2	١	ij
-	i	ì
9	į	Ė
ij	ŀ	į
¢	ì	١
	8	i
ø	į	
	3	į
ä	1	ì

Docket No. 29000

Operating Revenues and Expenses Assigned to Passenger. Service
Ten Railroads Operating in Kentucky

-	30		
Paterne	Operation	61.0	
CHECO	Assigned to Pass. Service	109.275	
	Total   Assigned to   Total   Assigned to   Operating   Pass Service   Operating   Pass   Operating   Pass   Operating   Pass   Operating   Operati		
	Assigned to Pass. Service	145, 236	orts to the I. C.
	All Other Exrl. Freight	24.448	their annual rep
TRO A CHI MODE	Express	9,186	carriers in t
4	Mail	13,684	made by
	Passenger	114,013	and expenses
	Total	1,019,038	t of revenues
		1942 Months 1943	1942 seeienmen
		Year 1	Source

17
No
Exhibit
i X

Docket No. 29000-Witness Whitnack

	Cash & Materials	Supplies Dec. 31, 1942 \$34,819	23,66,66 20,660 20,000	42,474 7,986 26,019 33,397	682
	Accrued Depre- intion & Accrued Amortisation of	Projects Dec. 31, 1942 \$122, 473	10, 158 10, 158 114, 234	102,612 11,313 95,989	1,068
ting in rentucky	(4) Book Invest- c	portation Property Dec. 31, 1942 \$601,348	3,070 58,980 69,344 359,168	61,283 61,283 529,427	8,797
d Kailroads Opera		used in Transpor- tation Service 1 Dec. 31, 1942		1	· i i
Valuation Data for Selecte	26 - N			245 245 25	921
Valuatio	Invest Road & Other	used in tation Dec. 3	<b>88</b>	455 455 502	200
			T P	<b>1</b>	
			Clinchfield C N O &	N A S	Southern. Tenn. Cent

C. Statement No. 4142, Rate of Return on Value of Property of AU Operating Steam Railway Companies, Calendar Y Column 1 withdrawn and stricken from Exhibit.) C., Preliminary Abstract of Railway Statistics, 1939 and 1942.

-Annual reports of the carriers to the I. C.

(Here follows 1 paster, side folio 2770)



## EXHIBIT No. 18

I. C. C. Docket No. 29000-Witness: Tassin

Freight Revenue (Accounts 101 and 121)

		CFO			NOLTP			GM&O	۵۰۰۰۰	10	(Incl. Y & M V	
Month	1943	1942	Percent Inc. or Dec.	. 1943	1942	Percent Inc. or Dec.	1943	1942	Percent Inc. or Dec.	1943	1942	Percent Inc.
January February March April May June	\$13,638,661 13,491,501 16,048,171 15,218,361 14,870,720 12,100,156	\$11,193,826 9,810,529 12,257,712 14,081,565 15,197,594 14,824,076	21 .84 37 .52 30 .92 .8 .07 D 2 .15 D 18 .37	\$2,454,025 2,155,893 2,498,754 2,319,114 2,504,670 2,316,702	\$1,666,717 1,582,300 2,024,920 2,139,773 2,111,501 2,130,731	47.24 36.25 23.40 8.38 18.62 8.73	\$2,920,438 2,866,594 3,135,455 3,231,167 2,730,381 2,554,310	\$1,927,455 1,882,673 2,064,465 2,428,138 2,656,219 2,540,097	51.52 .52.26 51.88 .33.07 .2.79 0.56	\$16,607,539 15,763,241 17,433,926 15,871,845 17,972,897 15,994,831	\$11,804,439 - 12,072,485 - 13,717,503 - 13,580,433 - 15,329,595 - 14,776,642	or Dec. 40.69 30.55 27.09 16.85 17.24 8.24
TotalAverage	\$85,367,570 \$14,227,928	\$77,365,302 4 \$12,894,217 L&N	10.34 10.34	\$14,249,158 \$2,374,860	\$11,655,942 \$1,942,657	22 25 22 25	\$17,438,345 \$2,906,391	\$13,499,047 \$2,249,841	29.18 29.18	\$99,644,279 \$16,607,380	\$81,281,097 \$13,546,850	22 .59 22 .59
January February March April May June	\$12,209,696 11,960,821 13,360,199 12,960,409 12,864,427 12,204,943	\$9,237,378 8,755,802 10,211,014 11,500,624 11,680,044 12,049,878	32 18 36 60 30 84 12 69 10 14 1 29	\$2,391,698 2,288,013 2,529,176 2,455,715 2,592,484 2,478,488	\$1,441,361 1,361,028 1,592,020 1,648,021 1,826,352 2,019,982	65.93 68.11 58.87 49.01 14.95 22.70	\$14,309,917 13,682,669 15,197,830 14,903,036 14,996,283 13,272,939	\$10,712,215 10,001,142 11,923,281 12,554,549 13,281,683 13,373,670	33.59 36:81 27.46 18.71 12.91 D 0.75	\$64,531,974 62,208,732 70,203,511 68,559,647 68,531,852 60,922,369	Total \$47,983,391 45,465,959 53,790,915 57,933,103 62,082,988	34 . 49 36 . 82 30 . 51 15 . 58 10 . 39
Total	\$75,560,495 \$12,593,416 e.	\$63,434,740 \$10,572,457	19.12 19.12	\$14,735,574 \$2,455,929	\$9,888,764 \$1,648,127	49.01 49.01	\$86,362,674 \$14,393,779	\$71,846,540 \$11,974,423			\$328,971,432 \$54,828,572	D 1.18 19.57 19.57

Source: Monthly Reports of Association of American Railroads, Bureau of Railway Economics.

EXHIBIT NO. 19

[fol. 2771]

C. C. Doeket No. 29000 - Witness: Tasejn

BEFORE THE

NTERSTATE COMMERCE COMMISSION

FOR INTRASTATE TRAFFIC BETWEEN POINTS IN KENTUCKY IN THE MATTER OF PASSENGER FARES AND CHARGES

Investment in Railway Property Used in Transportation Service—Schedule 211N (1); Cash—Schedule 200A (2); Material and Supplies—Schedule 200A (3); Total Investment (4); Net Railysy Operating Income—Schedule 300I (5); Rate of Return (6) Cash—Schedule 200A (2); Material and Schedule 3001 (5); Rate of Return (6) Chesapeake and Ohio Railway Company in Railway Property Used in Transportation Service—Schedule 211N (1); Schedule 200A (3); Total Investment (4); Net Railway Operating Income— Investment fol. 2772

(S) R. O. I. 112.579.054 (3) Mat. & S nvestment

595 595 727. 236. 386. 288 636. 152, 228 121 987 871 19 288837 2788837 344 551. 471 5521 5521 \$133,215,666 \$13,672,926 327, 63 202 681 355 2382822 1300 514 562, 925, 570, 281, 581, 805, 599, 935, 920 \$11.037 Average Short Cut Utilize

88

937

The Cincinnati, New Orleans and Texas Pacific Railway Company

Year	(1) Investment	8	(3)	€. 1	(5)	(9)
1001			~		N. R. O. I.	Keturn
170	10	-	-			3.40
778	613		-			3.33
070	88	-				808
924	279		-	-		8 63
979	587		-			11 47
926	61,262,817	2.665.133	2.539.020	66, 466, 970		8 50
777	326		-	10		60.9
978	23		-			6 91
929	38					5 53
980	779					4 40
900	265			782		2 53
902	24			260		2 16
900	168	-	-			4 17
100	524			959		3 93
9000	379		- 4	144		4 31
900	244		-	295		5 79
000	139			077		5 35
000	177			995		4 39
900	918			327		5 62
	342	To		190		5.42
	7			248		6.30
7.6	<b>3</b>			306	5, 222, 964	5.78
Total. Average.	\$1,558,615,241 \$70,846,147	\$112,573,284	\$31.415.974	\$1,702,604,499	\$93.713,494	5 50%

\* See copy of correspondence on page 8.

Envestment \$91,829,40	(2)	8		(9)	(9)
828	Gash	Mat. & Sup.	Total	N. R. O. I.	Return
842		\$1,838,832	245		1.32%
	3 020	2.130,110			4.30
033	2.180		767	-	4.42
101-96	2.263.	-	701	-	2 23
850	3,010.		822		2.36
058	3.260.	-	436	_	4 90
8	4,314.	-	545.	-	4.13
8	3,306,	-	283		200
3	2.417.	-	828	-	38
368	3,905	T.	.208		200
792	1,879.		178		3
13	2.407.	-	200	-	0.00
3	1.978	-	516		970
101,410,151	1 838 146	1.121 131	104.402.692	1.173.074	- 12
101 256	2 186		761		2.55
372	1.611		846		1.97
102.469	2,164		. 268		89 -
.90.368	1.980		630		500
220	2,710		515		22
459	3,746.		875		4.26
200	4.791.		. 626		2 82
727	\$58.460	\$38,420,740		\$62,956,091	2.73%
Average \$100,396,714	\$2,657,299	738	\$104.792.228		2 73
t method utilized*			157	.879.	2.82

[fol. 2774]

Illinois Central Railroad Company



Schedule 200A (2); Material and Supplule 300[ (5); Rate of Return (6) Louisville & Néhville Railroed Company ed in Transportation Service—Schedule 211N (1); Cash— if Investment (4); Net Railway Operating Income—Schedu [fol. 2776]

		12.7				1331
(6) Return	5.18	2.5.5.5.5.5.5.5.5.5.5.5.5.5.5.5.5.5.5.5	8228	2535 5535	******	33.77
S	25.58 5.58	\$25.00 \$20.00 \$2	2582	2887 287 287	15, 551, 121 11, 622, 971 15, 848, 660 17, 187, 963 25, 548, 223 23, 732, 085	\$389,415,839 \$17,700,720 \$17,700,721
Total	800 800 800 800 800	28±88	25255 25255	¥858	478,587,755 480,928,556 496,124,299 486,106,300 509,325,031 519,462,411	\$10,333,410,049 \$469,700,457 \$469,700,458
83	226 146 457	==28	2822	8882	8.804.451 7.629.118 8.908.745 9.707.783 11.572.630	\$252,002,025
C.3	22.5	258 258 258 258 258 258 258 258 258 258	84888	8528 8528	14,782,121 17,261,117 31,042,100 18,684,663 26,841,025 30,223,337	\$387,310,487 \$17,605,022
(1) Investment	55.5 57.7 57.7	2828	8888	2528	455,014,183 456,038,321 455,178,454 470,911,426 476,988,019	89.694.007,534 \$440,636.706
						or Utilized
Von	1922	2882	888.00 880 880 880 880 880 880 880 880 8	288 288 288 288 288 288 288 288 288 288	1937 1930 1940 1942	Average Short C

Nashville, Chattanooga and St. Louis Railway Comp

Supplies	sandda.
rial and	-n (B)
. Mate	of Det
. 63	Date
Railway Property Used in Transportation Service—Schedule 211N (1); Cash—Schedule 2003 (2); Material and Supplies	Source and (3); 10th Investment (4); Net Railway Operating Income—Schodule 2001 (5). B
Investment	

	Ē .	(3)	(3)	(7)	(9)	(6
			Mat. & Sup.	Total	I O Z N	Reti
	\$86, 932, 433	\$2,326	00	8	Si 071	
		2,542			200	- 6
057			3.059.809	95,373	3.061.971	0 64
	3	1,737			3.433	
9	77	808		081	3 937	
	515	- 988		141	4.018	
0.08		1.724			3.841	
0.00	5	- 198		.767	4.232	7
	462	5.294		562	- X-5	•
	9	626		417	2.112	. 61
	143	28		137	822	
933	Ŧ:	832		924	715.	0
	601	510		197	. 885	
935	200	685		159.	953	0
036	9	937		010	523	0
0.37	213,	1.518		381	f.382	-
0.28	200	108		880	840	0
	3	2,253		489	1.481.	-
		3,754		96	1.082	34
-	513,	3,357,		900	2,069	
	200	3,701,		258	3.309	000
	302	\$5,119,		888	5,702.	5.34
Fotal	\$2,093,744,090	\$42,709.813	.\$45,504,236	.958	\$54,425.	2.4
Short Cut Method Utiliz		3	8	\$99.179.9 \$99.179.9	915. <b>\$2</b> ,473,903 924. <b>\$2</b> ,445,499	2.49
djustment to actual	Adjustment to actual necessitates the following cha	nanges on page 6 of	Exhibit No. 6:			
Decrease Net Ry. Oper	Ry. Operating Income by:		•	Dec.	99 Dec \$1.596	
THE PRINCE IN	Caro of County					

6	-	-	
×		,	
104	ō		
-	2/12		
_			100
3	Š		

	7
	- E
	ate
5	2
	3
	VO
	8
	e e
	hed
	Z.
- ;	4
	2
	.:
ny	7
npa.	=
Con	6 2
S.	P
N.	e pe
2	3
E	ice
Southern Railway Cor	S.
Sou	5
	atio
	to Ca
	nsp
	Fra
	in J
	2
	200
	4
,	36
,	48
	. S.
•	stment in Railway. Property Used in Transportation Service—Schedule 211N (1); Cash—Schedule 200A (2); Material and Sum Schedule 200A (3); Total Investment (4): Not Boilway.
	Rache
	500
o o	ent
	ti.
. 0	<b>36</b>

\$210,738, 124, \$8, 197 654 \$13, 591, 965 \$538, 525, 884 \$13, 973 (578) 528, 142, 300 10, 124, 125 12, 124, 1624 549, 782, 241 \$20, 676, 558, 406, 681 10, 617, 095 11, 543, 052 580, 569, 823 35, 377 583 430, 680 14, 021, 025 11, 543, 052 580, 569, 423 35, 377 583 430, 680 14, 021, 025 11, 034, 14, 021, 025 11, 024, 14, 021, 025 11, 024, 14, 021, 025 11, 024, 14, 021, 025 11, 024, 14, 021, 025 11, 024, 14, 021, 025 11, 024, 14, 021, 025 11, 024, 14, 021, 025 11, 024, 14, 021, 025 11, 024, 12, 023, 143, 023, 143, 024, 025, 143, 024, 024, 024, 024, 024, 024, 024, 024	lear .	stme	ash	Mat. & Sup.	Total	(9)	(9)
588 142 300 10.124,120 1525 12,461,624 549,722,21 50,676,189 258,406,681 10.0124,120 10.963,452 556,163 28,436,307 558,406,681 10.0124,120 11.541,842 610,569,823 55.545,163 28,436,307 558,436,300 14.021,039 11.541,844 610,306,470 223 55.377,294 610,306,470 223 55.377,294 610,306,470 223 55.377,294 610,306,470 235,377,294 610,306,470 235,377,294 610,306,470 235,377,394 610,306,470 23,306,470 235,377,394 610,306,470 235,377,394 610,306,470 235,370 610,342,46 610,342,342,34 610,342,34 610,342,34 610,342,34 610,342,34 610,342,34 610,342,34 610,342,34 610,342,34 610,342,34 610,342,34 610,342,34 610,342,34 610,342,		90	197		£538 595 604		Neturn
558, 409 681 10 6124 120 11 531,022 550,556, 163 28,456, 307 586 530 587 820 536 5356, 163 536, 163 536, 163 536, 163 536, 163 536, 163 536, 163 536, 163 536, 163 536, 163 536, 163 536, 163 537 7294 53 638, 436 600 14, 521 600 15, 641 612, 306, 400 35, 779 14, 521 623 640, 1001 250 627 401, 272 32, 393 768 55 623 740, 422 11, 594, 179 6, 994, 229 645, 266, 468 30, 244, 246 628, 376, 376, 376, 376, 376, 376, 376, 376		620	291		549 782 941	90,973	2.59%
575, 690, 802   10, 543, 694   10, 543, 692   500, 569, 828   30, 572, 294   500, 603, 647, 620, 682   16, 114, 989   10, 903, 452   602, 604, 229   621, 400, 602   14, 602, 602   622, 700, 422   623, 700, 422   11, 584, 179   6, 984, 229   624, 226   645, 886   694, 229   623, 700, 422   11, 584, 179   6, 984, 229   642, 658, 890   623, 700, 422   11, 584, 179   6, 984, 229   642, 658, 890   19, 777, 932   622, 503, 603, 603, 603, 603, 603, 603, 603, 6		147	124		586	98 436	3.76
589 30 690 693 592 693 593 77 294 59 603 603 604 723 35 377 294 59 603 604 723 60 145 593 690 145 620 629 140 620 629 140 100 200 627 401 272 32 993 778 623 740 422 61 400 629 438 90 622 628 570 896 994 290 642 629 643 629 643 629 644 625 899 90 30 244 246 629 438 967 644 625 899 90 19 777 932 62 993 778 629 629 438 967 644 625 899 90 19 777 932 62 993 778 90 629 438 967 644 625 899 90 19 777 932 644 625 899 82 91 82 91 777 932 644 625 899 90 19 777 932 644 625 899 82 91 82 91 82 91 82 91 82 91 82 91 82 91 82 91 82 91 82 91 82 91 82 91 82 91 82 91 82 91 82 91 82 91 91 91 91 91 91 91 91 91 91 91 91 91		200	61.7		569	30,450	00.00
603 047 523		36	= = = = = = = = = = = = = = = = = = = =		200	35,377	800
621, 420, 080  622, 420, 080  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  623, 740, 422  624, 222  625, 316, 596  627, 40, 272  625, 316, 596  627, 40, 272  625, 316, 596  627, 40, 272  627, 627  628, 316, 596  628, 316, 596  628, 316, 596  628, 316, 596  629, 488, 672  629, 488, 672  629, 488, 297  639, 644, 025, 869  644, 025, 865  644, 025, 865  644, 869  645, 869  646, 864  647, 865  648, 869  649, 865  649, 865  649, 865  649, 865  649, 865  649, 865  649, 865  649, 865  649, 865  649, 865  649, 865  649, 865  649, 865  649, 865  649,		25	170		306	35 760	100
628, 740, 422		5 5	700		401	32 063	20.00
628, 570, 806		128	710		266	30.808	4.70
629, 438, 967 4, 390, 622 1, 586, 241 639, 185, 830 8, 219, 535 1 6 6 6 6 28, 38, 222 22, 6 6 6 6 28, 38, 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6		229	3		658	30.244	4 71
628, 316, 596 608, 359, 859 608, 359 60		436	181		025	19,777	2002
608, 359, 359, 579, 589, 579, 589, 579, 589, 579, 589, 579, 589, 589, 599, 589, 599, 599, 599, 59		316	200		158	8.219	1 30
600, 548, 797 5, 349, 727 4, 045, 433 617,805,019 15,024,652 2 584, 922, 544 6, 599, 839 4, 196, 788 610,029, 424 12, 707,119 2 588, 167, 259 8, 419, 462 5, 395, 537 601, 982, 247 14, 311, 509 2 588, 167, 259 8, 419, 462 5, 395, 537 601, 982, 247 14, 311, 509 2 589, 167, 259 8, 419, 462 5, 395, 537 601, 982, 247 14, 311, 509 2 589, 169, 291 7, 7545, 415 4, 772, 252 609, 354, 278 11, 579 681 15, 254, 896 100, 479, 985 610, 489 61, 174, 956 616, 892, 233 11, 479, 985 611, 510, 178 16, 640, 489 61, 559, 415, 807 616, 892, 233 11, 4579, 681 15, 600, 479, 985 611, 510, 178 16, 640, 489 61, 559, 415, 807 707, 703 8, 235, 778, 621 8, 190 184 191 8, 134, 655, 538, 523 8, 130, 417, 210 88, 184, 191 8, 194, 194, 194, 194, 194, 194, 194, 194		250	707		506	4 346	0000
598, 167, 259 598, 167, 259 588, 167, 259 588, 167, 259 588, 167, 259 588, 167, 259 588, 167, 259 588, 167, 259 588, 168, 581 588, 168, 581 602, 919, 029 588, 216 602, 919, 029 603, 917, 907 603, 917, 907 603, 917, 907 603, 918, 921 603, 918, 921 603, 918, 921 603, 918, 921 603, 919, 929 603, 919, 919 603, 91		240	Sec.		805	15 024	9.00
583, 167, 259 583, 167, 259 583, 167, 259 583, 167, 259 583, 167, 259 583, 167, 259 583, 167, 259 583, 167, 259 583, 168, 247 583, 150 600, 1982, 247 19, 480, 682 287, 036, 611 7, 545, 415 602, 916, 947 9, 888, 216 600, 172, 243 600, 349, 277 600, 349, 277 600, 349, 277 600, 349, 277 600, 349, 277 600, 349, 277 600, 349, 287 611, 540, 178 611, 540, 178 611, 540, 178 611, 540, 178 611, 540, 178 611, 540, 178 611, 540, 178 611, 540, 178 611, 540, 148 622, 019, 029 23, 907, 594 9, 489, 184 652, 145, 593 616, 882, 233 617, 594 9, 489, 184 652, 019, 029 23, 007, 594 9, 489, 184 652, 145, 593 8612, 860, 440 822, 888, 182 823, 991, 307 822, 888, 182 823, 991, 307 822, 888, 182 823, 994, 307 824, 695, 503 824, 695, 503 824, 695, 503 824, 695, 503 824, 695, 503 824, 695, 503 824, 695, 503 824, 695, 503 824, 695, 503 824, 695, 695 825, 694, 695, 503 825, 694, 695, 503 825, 694, 695 825, 694, 697 825, 694, 695 825, 694, 695 825, 694, 695 825, 694, 695 825, 894, 307 825, 888, 182 825, 894, 307 825, 888, 182 825, 894, 307 825, 888, 182 825, 894, 307 825, 888, 182 825, 894, 307 825, 884, 182 825, 894, 307 825, 888, 182 825, 894, 307 825, 884, 182 825, 894, 307 825, 884, 182 825, 894, 307 825, 884, 182 825, 894, 307 825, 884, 182 825, 894, 307 825, 884, 182 825, 894, 307 825, 884, 182 825, 894, 307 825, 884, 182 825, 894, 307 825, 884, 182 825, 894, 307 825, 884, 182 825, 894, 307 825, 884, 182 825, 894, 307 825, 884, 182 825, 894, 307 825, 884, 182 825, 894, 806		5 8			020	19 707	25.43
\$83,833,021 6,684,524 6,638,436 601,982,247 19,430,632 357,036,011 602,916,947 9,882,415 6,72,252 609,344,278 115,254,899 2 602,916,947 9,882,415 6,472,252 609,344,278 115,254,899 2 6,547,365 616,882,233 21,457,294 3 611,510,178 16,640,484 8,796,645 616,882,233 21,457,294 3 21,457,294 3 22,019,029 23,907,594 9,489,184 655,415,807 46,265,818 7 46,265,818 7 46,265,818 7 46,265,818 7 46,265,818 7 46,265,818 7 46,265,818 7 46,265,818 7 8,593,168,531 \$10,717,210 \$8,184,191 \$612,069,932 \$22,891,307 \$32,891,307		100			88	14 311	900
\$57,085,011		100	419,		982	10 430	00.00
602, 916, 947 7, 945, 415 4, 772, 252 609, 354, 278 14, 879, 661 20, 916, 947 9, 888, 216 6, 174, 956 618, 980, 119 20, 631, 130 3, 600, 479, 985 616, 640, 484 6, 547, 559 616, 882, 233 611, 510, 178 16, 640, 484 8, 796, 645 645, 947, 307 32, 789, 981 3 7, 989, 981 3		200	3		55	15,954	0.73
600, 479, 985 988, 216 6, 174, 956 618, 990, 119 20, 531, 130 3 610, 549, 199 985 9854, 689 6, 547, 559 616, 882, 233 21, 457, 294 3 611, 540, 178 16, 640, 484 9, 489, 184 652, 019, 029 23, 907, 594 9, 489, 184 655, 415, 807 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 46, 265, 818 7 88, 182 88, 1		900	545		25.4	1.0.00	2.50
\$13,049,707,703 \$23,778,621 \$8,184,191 \$612,802,233 \$1,457,294 \$3,185,818 \$766,645 \$636,947,307 \$32,789,981 \$7,185,631 \$10,717,210 \$8,184,191 \$612,069,932 \$22,891,307 \$32,789,981 \$7,185,631 \$10,717,210 \$8,184,191 \$612,069,932 \$22,891,307 \$32,789,981 \$7,185,631 \$10,717,210 \$8,184,191 \$612,069,932 \$22,891,307 \$33,738, 182 \$3,125, Return on Investment: Dec. 0.01 \$22,891,307 \$32,891,307 \$32,891,307 \$32,891,307 \$32,891,307 \$32,891,307 \$32,891,307 \$32,891,307 \$32,891,307 \$32,891,307 \$32,891,307 \$32,891,307 \$33,7384 \$106,116,674 \$4,191 \$2,469,465,503 \$106,116,674 \$4,191 \$2,469,469,460 \$2,469,460 \$2,469,460 \$2,469,460 \$2,460,460 \$2,460,460 \$2,460,460 \$2,460,460 \$2,460,460 \$2,460,460 \$2,460,460 \$2,460,460 \$2,460,460 \$2,460,460 \$2,460,460 \$2,460,460 \$2,460 \$2,460,460 \$2,460 \$2,460,460 \$2,460 \$2,460 \$2,460 \$2,460 \$2,460		910	888		5	20.00	2.36
\$13,049,707,703 \$235,778,621 \$180,052,199 \$13,465,538,523 \$503,608,759 \$3 \$27,89,981 5 \$3 \$235,778,621 \$180,052,199 \$13,465,538,523 \$503,608,759 \$3 \$3 \$25,891,307 \$32,789,981 5 \$3 \$3 \$3 \$16,717,210 \$8,184,191 \$612,069,932 \$22,891,307 \$3 \$22,891,307 \$3 \$3 \$25,891,307 \$3 \$3 \$25,891,307 \$3 \$3 \$25,891,307 \$3 \$3 \$25,891,307 \$3 \$3 \$25,891,307 \$3 \$3 \$25,891,307 \$3 \$3 \$3 \$3 \$3 \$3 \$3 \$3 \$3 \$3 \$3 \$3 \$3		6/6	35		68	91 457	33.33
\$13,049,707,703 \$235,778,621 \$180,052,199 \$13,465,538,523 \$503,608,759 \$3 \$5593,168,531 \$10,717,210 \$8,184,191 \$612,069,932 \$22,881,307 \$3 \$522,881,307 \$3 \$503,608,759 \$3 \$503,083, Not By. Operating Income: Ine. \$3,125, Return on Investment: Dec. 0.01 \$2,469,465,503 \$106,116,674 \$4 \$106,116,674 \$106,116,116,116,116,116,116,116,116,116,		ONG.	16,640,484		17	20 750	3.48
\$13.049,707,703 \$235,778,621 \$180,052,199 \$13.465,538,523 \$503,608,759 \$3 \$593,168,531 \$10,717,210 \$8,184,191 \$612,069,932 \$22,881,307 \$3 \$22,881,307 \$3 \$512,800,440 \$22,888,182 \$3 \$3 \$22,881,807 \$3 \$3 \$22,881,807 \$3 \$3 \$22,881,807 \$3 \$3 \$22,881,807 \$3 \$3 \$22,881,807 \$3 \$3 \$22,881,807 \$3 \$3 \$22,882,182 \$3 \$3 \$22,882,182 \$3 \$3 \$22,882,182 \$3 \$3 \$22,882,182 \$3 \$3 \$22,882,182 \$3 \$3 \$22,882,182 \$3 \$3 \$22,882,182 \$3 \$3 \$22,882,182 \$3 \$3 \$22,882,182 \$3 \$3 \$22,882,182 \$3 \$3 \$3 \$3 \$3 \$3 \$3 \$3 \$3 \$3 \$3 \$3 \$3		57.0	23,907,594		15	46 965	2.15
\$593, 168, 531 \$10, 717, 210 \$8, 184, 191 \$612, 305, 323 \$503, 608, 759 \$3  **Lual necessitates the following changes on page 6 of Exhibit No. 6:  **Corrections: Total as rendered	Total	.049.707.	77.8	050	4	10.00.	8
### \$612,860,440	Out Itilized	168	717.	28	900	800	2
essitates the following changes on page 6 of Exhibit No. 6. 5.508; Net Ry. Operating Income: Inc. \$3,125; Return on Investment: Dec. 0.01. 82.469,465,503 \$106,116,674 4 Inc. 2 634,966 Dec. 17,553 Dec.0 Dec. 790,508 Inc. 3,125 " 0 35,479 Dec. 337,264 " 0					860	888	20.00
ns: Total as rendered 1.53,125; Return on Investment: Dec. 0.01. \$2,469,465,503 \$106,116,674 4 Inc. 2,634,966 Dec. 17,553 Dec.0 Dec. 790,508 Inc. 3,125 " 0	Adjustment to actual necessitation Investment: Dec. \$790.508.	tes the following cha		Exhibit No. 6:			
O. 16, 16, 674 4  Ry. Inc. 2, 634, 966 Dec. 17, 553 Dec. 0  Ry. Dec. 790, 508 Inc. 33, 125 ** 0  & St. L. 35, 479 Dec. 337, 264 ** 0	Summary of Corrections: To	otal as rendered	Income: Inc. \$3,12	5; Return on Inve	0		
A St. L. 35, 479 Dec. 33, 479 Dec. 337, 264 " 0	GM&O				le:	-	4.30
.479 Dec. 337.264 " 0	LC ny		The state of the same			-	Dec.0.09
	N. C. & St. L.		and the same of the same				000

The Cincinnati, New Orleans and Texas Pacific Railway Company Copy

September 11, 1943 Washington (13) D. C.

File 581/13

Miss Lucille Tobin, Secretary,

Dear Miss Tobin:

Railroad Commission of Kentucky, Frankfort, Kentucky. In comparing our file copy of this company's Append Report to the Railroad Commission of Kentucky for the year ended December 31... of corrections to be made in the report on pages 207 and 208.

A copy of my letter dated April 30, 1943 to Director Linear of the Interstate Commerce Commission is attached for ready reference and will appreciate it if you will see that the corrections referred to are made in your copy of this company's report for the year ended Decem-

Yours very truly,

(Signed) T. H. Seay, Comptroller

Washington, D. C., April 30, 1943. File 581/13

Interstate Commerce Commission, Washington, D. C. Bureau of Transport Economics and Statistics,

Dear Sir

Mr. M. O. Lorenz, Director,

Your letter April 27, 4943, concerning Annual Report of this company to the Interstate Commerce Commission for the year ended Decem-We have now received some additional data concerning the Annual Report of The Cincinnati Southern Railway and based upon this information, the following corrections are authorized in this company's Annual Report for the year ended December 31, 1942.

Page 208, Schedule 213, item 4(a), change from \$606,505 to \$262,959 Cr. item 4(b), change from 606,505 to \$262,959

Page 207, Schedule 211N, the item shown in columns (c) and (e) on line 10, i. e., \$24,942,006 is the net charge after the adjustment reines II and I2, column'(a), eliminate "Less retirement of Old Ohio River Bridge. ferred to above and consequently the following eliminations should be made from this schedule: 12, columns (c) and (e), eliminate item designated (E) \$1,002,953.

, change total of \$82,891,450 to \$83,894,403 in each instance. 13, columns (c) and (e), eliminate figures \$23,939,053.

Yours very truly

(Signed) T. H. Seay, Comptroller,

P. S. Confirming conversation with Mr. Kreps, I understand you will insert on Page 405, in compliance with Schedule 417, the words "Diesel Electric."

[fol. 2780]

### Ехнівіт No. 20

I. C. C. Docket No. 29000-Witness: F. H. Tucker, Jr.

## Statement of Train Connections at Fulton, Ky.

June 1943.

(# 101 scheduled in at 8:10pm) (# 1 scheduled out at 8:25p) (# 103 scheduled in at 5:30am) (# 3 scheduled out at 5:55a)

		. *	Time			Time
	#101	#1	between	#103	#3	between
Date	arrived	dept'd	e trains	arrived	dept'd	trains
1	8:50p	9:28p .	38"	5:35a	5:55a	20"
2	8:10p	9:57p	1' 47"	5:35a	5:55a	20"
. 2	8:18p	8:38p	20"	5:30a	6:30a	1'
4	8:20p	8:40p	20"	6:00a	6:20a	20"
. 5	8:18p	8:52p	34"	8:20a	8:40a	20"
6 .	8:10p	8:42p	32"	6:17a	6:45a	28"
7	8:10p	8:25p	15"	5:30a	5:55a	25"
8.	8:20p	8:50p	30"	· 5:30a	5:55a	25"
. 9	8:25p	9:03p	38"	6:25a	6:44a	19"
10 .	8:20p	9:16p	56".	-5:50a	6:10a	20"
11	8:10p	8:50p	40"	5:40a	6:24a	44"
12	8:10p	8:30p	20".	• 5:30a	-6:05a	35"
. 13	8:25p	8:55p	30"	5#80a	5:55a	. 25"
14	8:10p	8:33p	23"	5:30a	6:00a	. 30"
15 .	8:10p	9:10p	1'	5:30a	6:00a	30"
.16	8:10p	8:50p	40"	5:30a	6:18a	48".
17	8:10p	8:53p	43'* B	5:30a	6:05a	35"
18	8:30p	8:50p	20"	5:30a	6:10a	40"
19	8:25p	8:50p	25" -	5:30a	5:55a	25"
20	8:10p	8:33p	23"	5:40a	5:55a	15".
21	8:10p ·	8:25p	15"	5:30a	5:55a	25"
22	8:10p.	8:33p	23"	5:40a	5:55a	15"
23	8:10p	8:27p	17"	5:30a	5:45a	15"
.24	8:10p	8:25p	15"	5:30a	6:05a	35"
25	8:25p	8:40p	1,5"	5:30a	5:55a	25"
26	8:25p	8:37p	12"	5:30a	6:05a	35"
27	8:10p	8:50p	20"	5:42a	6:05a	23"
28.	8:15p	8:40p	25"	5:30a		35"
29	8:20p	8:37p	17"	5:30a	5:55a	25"
30 .	8:10p	8:25p	15"	6:00a	6:20a	20"

[fol. 2781]

## Statement of Train Connections at Fulton, Ky.

## July 1943

(# 101 scheduled in at 8:10pm) (# 1 scheduled out at 8:25 p)

(# 103 scheduled in at 5:30am) (# 3 scheduled out at 5:55a)

	# 101	#1	Time between	# 103	#3	Time
Date	arrived	dept'd	trains	arrived	dept'd	trains
1	8:10p	9:31p	1' 21"	5:30a	6:05a	35"
2	8:10p .	8:25p	15"	5:50a	6:24a	34"
3	8:55p	9:05p	10"	5:30a	5:55a	25"
4	8:20p	8:33p	13"	6:04a	6:25a	21"
. 5	8:10p	8:29p	- 19"	5:30a "	5:55a	25"
6	8:10p	8:50p	40"	5:45a	6:00a	15"
. 7	8:10p	8:38p	28"	· 5:30a	5:55a	25"
. 8	8:10p	8:25p	15"	5:30a	5:55a	25"
9	8:10p	8:25p	. 15"	5:30a	6:10a	40"
10	8:10p	8:47p	37"	5:30a	5:55a	25"
. 11.	8:10p	8:30p	20"	5:30a	5:55a	25"
12	8:10p	8:30p	20"	5:30a	6:10a	40"
13	8:55p	9:28p	33"	5:30a	5:55a	25"
14	8:25p	8:43p	18"	5:30a	5:558	25"
15	8:10p	8:38p	18"	5:50a	6:10a	20".
16	8:10p	8:37p	27"	5:40a	6:05a	25"
17	8:20p	8:37p	17"	5:50a	6:04a	145
18	8:10p	8:25p	15" .	5:44a	6:05a	211
19	9:25p	9:50p	25"	6:45a	7:00a	151
20	8:10p	8:25p	15"	5:45a	6:00a	15"
21	8:30p	8:52p	22"	5:45a	6:05a	20"
22.	8:10p	8:25p	15"	5:45a	6:18a	33"
23	8:10p	8:33p	23"	5:40a	6:05a	25"
24	8:10p	8:40p	30"	5:30a	6:00a	30"
25	8:10p	8:25p	15"	5:30a	6:00a	30"
- 26	8:20p	8:34p	14	5:30a	5:55a	25"
. 27	8:10p	8:25p	157	5:40a	6:10a	30"
28	9:10p	9:29p	190	5:40a	6:05a	25" .
29 .	8:57p	9:27p	30"	6:05a	6:20a	15"
30 .	8:10p	8:30p .	20"	6:35a	6:55a	20"
31	8-10p	8:30n	20"	5:40a	6.000	2011

Statement of Train Connections at Fulton, Ky.

# August 1943

5 1 s	cheduled out	at 8:25p)	Time	(# 3 sche	duled out a	Time
Date	# 101 arrived	#3 dept'd	between trains	# 103 arrived	#3 dept'd	between trains
1	9:00p	9:25p	25"	5:55a	6:15a	20"
2 3	8:43p	8:55p	12"	5:30a	.6:14a	44"
3	8:35p	8:50p	15"	5:30a	6:12a	42" -
4-	8:10p	8:30p	20"	6:50a	. 7:20a	30"
5 .	8:40p	8:57p	17"	5:40a	5:55a	15"
6	8:20p	8:43p	23"	. 5:55a	6:10a	15"
7	8:10p	8:25p	15"	5:30a	5:55a	25"
8	8:10p	8:25p	. 15"	5:40a	6:00a	20"
9	8:30p	8:50p	20"	5:40a	5:55a	15"
10	8:10p	8:25p.	15"	5:30a	5:55a	25"
11	9:00p	9:19p	19"	5:30a	5:55a	25"
12	8:35p	8:58p	23"	5:30a	5:55a	25"
13	8:20p	8:43p.	23"	5:38a	6:10a	32"
14	8:45p	9:09p	24"	5:30a	5:55a	25"
15	8:15p	8:27p	12"	6:20a	6:40a	20"
16	8:10p	8:25p	15"	5:30a	6:10a	.40"
17	8:10p	8:25p	15"	5:30a	6:00a .	30"
18	8:24p	8:45p	21"	5:30a	6:00a	30"
19	8:10p	8:25p	15"	5:30a	5:55a .	25"
20	8:50p	9:12p	22"	5:45a	5:55a	10" .
21.	8:19p	. 8:32p	13"	5:30a	5:55a	25"
22	8:10p	8:25p	15"	5:50a	6:10a	20"
23	8:10p	8:30p	20"	5:30a	5:55a	25"
24	8:10p	8:25p	15"	5:30a	5:55a	25"
25	8:10p.	8:25p	15"	5:30a	5:55a	25"
26	8:10p	8:25p	15"	6:05a	6:25a	20"
27	8:10p	8:29p	19"	5:45a	6:15a	30"
28 -2	8:33p	8:40p	7"	5:30a	5:55a	25"
29 30	8:10p	8:25p	15"	6:00a	6:25a	25"
30	8:10p	8;35p	25"	5:30a	5:55a	25"

[fol. 2783]

Statement of Train Connections Between IC and B&O at Louisville

### June 1943

(IC 102 scheduled in at 5:50pm) (B&O 58 scheduled out at 7:00p) (IC 104 scheduled in at 8:05am) (B&O 54 scheduled out at 8:30a)

Dan 99	scheduled o	de at 1,001	2	Inter out of	. 43	1
•	IC #100	B&O	Time between	1C #104	B&O #54	Time
	#102	# 58			dont'd	
Date	arrived	dept'd	trains	arrived	dept'd	trains
1	7:30p	7:00p	missed	8:10a	. 8:38a	28"
12	6:30p	7:10p	40"	8:15a ·	8:37a	22"
3	5:50p	7:10p	1' 20"	8:05a	8:35a	30"
4	6:10p	7:00p	50"	8:20a	8:43a	23"
5	7:00p	7:10p	10"	8:15a	8:35a	20"
6	6:10p	7:08p	58".	8:30a	8:48a	.18"
6.7	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
8	6:15p	7:00p ·	45"	8:05a	8:35a	30"
8	6.01p	7:00p	59"	8:35a	8:53a	18"
10	бр	7:00p	55"	8:18a	8:45a	27"
11	6:10p	7:00p	50"	9:00a	8:30a	missed
12 .	5:50p	7:00p	1' 10"	8:05a	8:30a	• 25"
13	-6:25p	7:00p	35"	9:10a	8:30a	missed
14	6:00p	7:00p	1'	8:05a	8:30a	25"
15	5:50p	7:00p	1' 10"	9:00a	9:30a	30"
16	5:55p	7:00p	1'. 5"	8:42a	9:05a	23"
17	6:35p	7:00p	25"	8:25a	8:42a	17"
18	6:00p	7:00p	114	8:30a	8:45a	15"
19	6:15p	7:00p	45" -	8:10a	8:30a	20"
20	6:00p	7:00p	1'	8:05a	8:45a	. 40"
21	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
22	5:50p	7:00p	1' 10"	8:05a .	· 8:34a	19"
23	5:50p	7:00p	1' 10"	:: 8:10a	8:40a	30"
24	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
25	6:30p	7:00p	30"	8:13æ	8:40a	17"
26	5:50p	7:00p	1' 10"	8:05a	8:30å	25"
27	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
28	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
29	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
30	5:50p	7:00p	1'.10"	8:20a	9:03a	43"
00	0.000					

[fol. 2784]

Statement of Train Connections Between IC and B&O at Louisville

July 1943

(IC 102 scheduled in at 5:50pm) (IC 104 scheduled in at 8:05am) (B&O 58 scheduled out at 7:00p) (B&O 54 scheduled out at 8:30a)

Date	# 102 arrived	B&O #58 dept'd	Time between trains	IC #104 arrived	B&O #54 dept'd	Time between trains
1	5:50p	7:00p	1' 10"	8:18a	8:50a	22"
2	6:50p	7:00p	- 10"	8:05a	8:30a	25"
3	6:20p	7:00p	40"	. 8:05a	8:30a	25"
4	6:03p	7:00p	57"	8:10a	8:55a	45"
5	6:00p	7:00p	. 1'	8:05a	8:30a	25"
6 7	5:50p	7:00p	1' 10"	. 8:05a	8:30a	25"
1 7	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
8	5:50p	7:00p	r' 10"	8:05a	8:30a	25"
. 9	6:00p	7:00p	1'	8:05a	8:30a	25'
10	6:30p	7:15p	45"	8:05a	8:30a	. 25
11	6:35p	7:00p	25"	8:15a	9:40a	1' 25"
12	5:55p	7:00p	1' 5"	8:05a	8:30a	25"
13	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
14	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
15	6:00p	7:00p	.1'	8:30a	.8:52a	22"
16	5:50p	7:00p	1' 10"	8:20a	8:47a	27"
17	6:24p	7:00p	36"	8:35a	8:57a	22"
18	5:50p	7:00p	1' 10"	9:00a	9:25a	25"
19	5:55p	7:00p	1' 5"	8:30a	8:50a	20"
20	5:58p	7:00p	1' 2"	9:00a	9:30a	30"
21	6:30p	7:00p	30"	9:00a	9:15a	15"
22	6:00p	7:00p	. 1'	8:05a	8:30a	25"
23	5:55p	7:00p	1' 5"	8:05a	8:30a	25"
. 24.	5:50p	7:00p	1' 10"	8:15a	8:30a	15"
25	5:55p	7:00p	1' 5"	8:30a	9:27a	.57"
26	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
27	5:55p	7:00p	1' 5"	8:05a	8:30a	25"
28	6:00p	7:00p	. 1' .	8:25a	8:56a	31"
29	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
. 30	6:05p	7:00p	55"	8:10a	8:30a	20"
31	6:00p	7:00p	.1'	8:25a	8:48a	23"

[fol. 2785]

Statement of Train Connections Between IC and B&O at Louisville

# August 1943

	Date	1C # 102 arrived	B&O #58 dept'd	Time between trains	# 104 arrived	B&O #54 dept'd	Time between trains
	1	6:02p	7:00p	- 58"	5:20p	8:30a i	missed
18 6	2 .	5:50p	7:00p	1' 10"	8:05a	8:30a	25" .
	. 3	6:00p	7:00p	·- ['	8:05a	8:30a	25"
	4	6:02p	7:00p	58"	8:55a	8:30a	missed
	5	5:590	7:00p	1' 1"	8:50a	9:07a	17"
	6	5:50p	7:00p	1* 10"	8:30a	8:52a	. 22"
	7	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
	8	7:05p	7:12p	7"	8:05a	8:45a	40"
	9.	5:50p	7:00p	1' 10"	8:05a	8:30a ·	25."
	10 :	6:20p	7:30p	1' 10"	8:05a	8:30a	. 25"
	. 11.	6:00p	7:00p	1'.	8:05a	8:30a	25"
	12	6:40p	7:00p	20"	8:05a	8:30a	25"
	13	5:50p	7:00p	1' 10"	8:05a	8:30a	. 25"
	14	6:20p	7:00p	40"	8:05a	8:30n	25"
	15	6:45p	7:00p	15"	8:42a	9:02a	20"
	. 16	5:55p	7:00p	1' 5"	8:05a	8:30a	25"
	17	5:50p	7:00p	. 1' 10"	8:05a	8:30a	25"
	18	6:40p	7:00p	20"	8:40a	9:02a	22"
	19	5:50p	7:00p	1' 10"	8:20a	8:44a	- 24"
	20	5:55p .	7:00p	1' 5"	· 8:05a	8:30a	25"
	21	5:500	7:00p	1' 10"	8:05a	8:30a	25"
	22	6:20p	7:00p	40"	8:05a	8:30a	25"
	23	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
	24	5:50p	7:00p	1' 10"	8:05a	8:30a	25"
	25	6:25p	7:00p	35"	8:05a	8:30a	25"
	26	5:50p	7:00p	1' 10"	8:45a	9:04a	19" .
	27	6:05p	7:00p	55"	8:10a	8:35a	25"
	28		7:00p	55"	8:05a	8:30n	25"
	29	6:05p	7:00p	1' 10"	9:05a	9:25a	20"
		5:50p 5	7:00p	1' 10"	8:05a	8:30a	25"
A E	30	5:50p	7:00p	55"	8:05a	. 8:30a	25"
	31	6:05p	1:000	. 00	0.000	. 0.000	

[fol. 2786] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY, LOUISVILLE DIVISION

Action No. 706

THE STATE OF ALABAMA and Public Service Commission, Plaintiffs.

versus.

United States of America and Interstate Commerce Commission, Defendants

#### · Action No. 707

THE STATE OF TENNESSEE and THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, Plaintiffs,

#### versus

United States of America and Interstate Commerce Commission, Defendants

Action No. 708

Commonwealth of Kentucky, and Railroad Commission of Kentucky, Plaintiffs,

#### versus

UNITED STATES OF AMERICA, Defendant

Findings of Fact and Conclusions of Law—Filed August
3, 1944

## FINDINGS OF FACT

1. On June 1st, 1936 the Interstate Commerce Commission found in a proceeding then duly pending before it that the basic fare of 3.6 cents per passenger mile on interstate passenger coach travel in the territory south of the Ohio and Potomac Rivers and east of the Mississippi River was unreasonable to the extent that it exceeded 2 cents per passenger mile. Pursuant to said findings the basic interstate [fol. 2787] coach fare was on June 1st, 1936 reduced from 3.6 cents to 2 cents per passenger mile.

- 2. The Interstate Commerce Commission by order of January 21, 1942 in a proceeding properly pending before it authorized an increase of 10% in the interstate passenger coach fares effective February 10, 1942, thus raising the interstate passenger coach fare to 2.2 cents per passenger mile.
- 3. Shortly after October 1, 1942 the southern railroads filed with the Public Service Commission of Alabama, the Railroad and Public Utilities Commission of Tennessee and the Railroad Commission of Kentucky certain traffic schedules to become effective December 1, 1942, designed to raise the intrastate passenger coach fares in the respective states to the level of the corresponding interstate fares. Each State Commission held an investigation and hearing and in each instance found that the evidence presented did not justify the increase sought. The proposed increases were denied in each instance.
- 4. On March 17, 1943 the railroads operating in Alabama filed with the Interstate Commerce Commission a petition seeking an investigation under Sections 3, 13 and 15 of the Interstate Commerce Act of intrastate passenger coach fares in Alabama. On June 24, 1943 the Kentucky railroads instituted similar proceedings before the Interstate-Commerce Commission for authority to permit increases in Kentucky intrastate passenger coach fares, and at approximately that time the Tennessee railroads also instituted such proceedings with respect to the intrastate coach fares in Tennessee. The Interstate Commerce Commission consolidated all the proceedings before it, and after taking evidence and holding hearings issued its report and findings on March 25, 1944 under the style and docket number of Alabama-Intrastate Fares No. 28963. The Commission found that the interstate coach fares in effect in Alabama. Kentucky and Tennessee were just and reasonable; that the intrastate coach fares in said states were lower than the corresponding fares applicable interstate and intrastate · [fol. 2788] generally throughout southern territory; that the conditions-affecting transportation of passengers in coaches within these three states, intrastate on the one hand, and interstate to, from, and through these states on the other, were substantially similar; that interstate passengers in these states traveled in the same train and generally in the same cars with intrastate passengers, but were forced to

pay higher fares than the intrastate passengers for like services; that the railroad's revenues under the lower intrastate fares were less by at least \$725,000 per annum in Alabama, \$500,000 in Kentucky, and \$525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares, and that traffic moving under these lower intrastate fares was not contributing its fair share of the revenues required to enable the railroads to render adequate and efficient transportation service; that the maintenance of intrastate coach fares in these states to the extent that such fares are on a lower level than the corresponding interstate fares caused and would cause undue, unreasonable and unjust discrimination against interstate commerce, and that this unlawfulness should be removed by increasing the intrastate fares in the respective states to the level of the corresponding interstate fares contemporaneously maintained by the railroads to, from, and through such states.

- 5. Thereafter by order dated May 8, 1944 in said consolidated proceedings the Interstate Commerce Commission ordered the railroads operating in Alabama, Tennessee and Kentucky to cease on or before July 1, 1944 from practicing the unjust discrimination found by it to exist; and thereafter to maintain and apply passenger fares for intrastate transportation in the respective states on bases no lower than the passenger fares then maintained and applied by the railroads for like accommodations in interstate transportation to, from and through the respective states. The effective date of this order was thereafter postponed until August 15, 1944.
- 6. The said Findings of the Interstate Commerce Commission in Alabama Intrastate Fares No. 28963 are supported by substantial evidence.

[fol. 2789] Conclusions of Law.

1. The order of the Interstate Commerce Commission of May 8, 1944 which is sought to be set aside in these proceedings is an authorized and valid order, correctly applies the proper principles of law to the facts so found by it and approved in these proceedings, and is not arbitrary and unreasonable.

2. The Interstate Commerce Commission properly required on the evidence before it and its findings of fact substantially supported by said evidence that the railroads operating in Alabama, Tennessee and Kentucky establish and maintain intrastate coach fares for passengers on bases no lower than the existing interstate fares.

Wisconsin Ry. Commission v. C. B. & Q. R. R. Co.

257 U.S. 563;

New York v. United States 257 U. S. 591; United States v. Louisiana 290 U. S. 70:

Florida v. United States 292 U. S. 1;

Illinois Commerce Commission v. United States 292 U. S. 474:

Vinson v. Washington Gas Co. 321 U. S. 489;

Interstate Commerce Commission et al. v. The City of Jersey City et al. U. S. Supreme Court, May 29, 1944.

3. The injunction prayed for in each of the three actions is denied and the proceedings should be dismissed in each instance.

Elwood Hamilton, U. S. Circuit Judge, Sixth Circuit, Mac Swinford, U. S. District Judge, Eastern and Western Districts of Kentucky, Shackelford Miller, Jr., U. S. District Judge, Western District of Kentucky.

August 3rd, 1944.

Ifol. 27901

[File-endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DIS-TRICT OF KENTUCKY, LOUISVILLE DIVISION

#### Action No. 706

THE STATE OF ABABAMA and PUBLIC SERVICE COMMISSION, Plaintiffs.

#### versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COM-MISSION, Defendants

## Action No. 707

THE STATE OF TENNESSEE and THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, Plaintiffs.

#### versus

UNITED STATES OF AMERICA and THE INTERSTATE COMMERCE. COMMISSION. Defendants

# Action No. 708

COMMONWEALTH OF KENTUCKY, and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

#### versus

UNITED STATES OF AMERICA, Defendant

On Application for Injunction

Argued July 17, 1944 Decided August 3rd, 1944

Before Hamilton, Circuit Judge, and Swinford and Miller, District Judges

Wm. N. McQueen, Acting Attorney General and Forman Smith, Assistant Attorney General for the State of Alabama and Alabama Public Service Commission; Leon Jourolman, Jr., for the State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee; Eldon S. Dummitt, Attorney General, M. B. Holifield, Assistant Attorney General and J. E. Marks for the Commonwealth of Kentucky and the Railroad Commission of Ken[fol. 2791] tucky; Daniel W. Knowlton, Chief Counsel and Allen Crenshaw, Attorney, for Interstate Commerce Commission; W. L. Grubbs, E. A. Smith, Charles Clark, Jos. P. Cook, Y. D. Lott, H. L. Walker and Frank W. Gwathmey for the Intervening Railroads; Richard H. Field, General Counsel, David F. Covers, Assistant General Counsel, Bernard H. Fitzgerald, Transportation Counsel and M. D. Miller, Attorney for Economic Stabilization Director and the Price Administrator; Eli H. Brown, III, United States District Attorney, and Robert L. Pierce, Special Assistant to the Attorney General, for the United States of America.

# Opinion-Filed August 3, 1944

MILLER, District Judge:

The State of Alabama, the State of Tennessee, and the Commonwealth of Kentucky filed these respective actions on June 12, 1944 against the United States of America and the Interstate Commerce Commission to enjoin and set aside an order entered by the Interstate Commerce Commission on May 8, 1944 which required the railroads operating in those three states to establish on or before July 1. 1944 certain minimum intrastate fares for transportation of persons in railway coaches which would raise said intrastate fares in the respective states to the level of corresponding interstate fares contemporaneously maintained by the railroads to, from and through such states. The Interstate Commerce Commission has postponed the effective date of its order to August 15, 1944 to provide a reasonable opportunity for a hearing and consideration by the Court of the issues presented. In compliance with the provisions of 28 USCA, Section 47 a three-judge court was duly convened, which after consolidating the three actions by agreement of the parties held the prescribed hearing. The matter is submitted for final judgment.

For many years prior to 1936 the basic interstate passenger coach fare of Class 1 American railroads was 3.6 cents per passenger mile. However, during the period of from December 1, 1933 through November 14, 1937 most of the railroads operating in the territory south of the Ohio and Potomac Rivers and east of the Mississippi River published and maintained an interstate passenger coach fare of 1.5 cents per passenger mile for one-way trips, and a [fol. 2792] 10% lower fare or 1.35 cents per passenger mile

for round trips. During this same period other southern railroads maintained an interstate passenger coach fare of 2 cents per passenger mile. In a proceeding known as Docket 26550, Passenger Fares and Surcharges, decided February 28, 1936, and reported in 214 ICC 174, the Interstate Commerce Commission found that the basic fare of 3.6 cents per passenger mile on interstate passenger coach travel was unreasonable to the extent that it exceeded 2 cents per passenger mile. In the same proceeding the Commission found that the interstate coach fare then being maintained and charged by some of the southern railroads. of 1.5 cents one-way and 1.35 cents round-trip was not un-Pursuant to the findings in that proceeding reasonable. the basic interstate coach fare was reduced from 3.6 cents to 2 cents per passenger mile on June 1, 1936. In a proceeding known as Ex Parte 148, Increased Railway Rates, Fares and Charges, 1942, 242 ICC 545, the Commission by order of January 21, 1942 authorized an increase of 10% in the interstate passenger coach fares effective February 10, 1942, thus raising the interstate passenger coach fare to 2.2 cents per passenger mile. This increase was for the purpose of taking care of increased expenses of the railroads incident to the war period and was limited to the duration of the war and six months thereafter. The southern railroads which had been charging since December 1933 interstate passenger coach fares of 1.5 cents one-way and 1.35 cents round-trip increased these fares on November 15, 1937 to 2 cents one-way and 1.8 cents round-trip, and on January 15, 1939 again reduced said fares to 1.5 cents one-way and 1.35 cents round-trip. Pursuant to the order in Ex Parte 148 Increased Railway Rates, Fares and Charges 242 ICC 545, these railroads on February 10, 1942 increased the fares 10%, which made them 1.65 cents one-way and 1.485 cents round-trip. On October 1, 1942 these fares were again increased to 2.2 cents one-way and 1.98 cents round-trip, which fares are still in effect.

Shortly after October 1, 1942 when the railroads increased their interstate passenger fares to 2.2 cents per mile they filed with the Public Service Commission of Alabama, the Railroad and Public Utilities Commission of Tennessee [fol. 2793] and the Railroad Commission of Kentucky certain tariff schedules to become effective December 1, 1942 designed to raise the intrastate passenger coach fares in

the respective states to the level of the corresponding interstate fares. Each State Commission held an investigation and hearing. The Public Service Commission of Alabama found that the railroads had failed to show that they needed any additional revenue, that on the contrary they had ample revenue to take care of their operating expenses and in addition earn a reasonable return on their investments. and that the difference between interstate and intrastate fares did not create any unreasonable discrimination or undue prejudice. The Railroad and Public Utilities Commission of Tennessee found that the carriers had presented no evidence which would justify the increase sought by them and ordered that the existing fares be maintained as just and reasonable. The Railroad Commission of Kentucky found that the proposed increases in coach fares within that state were not shown by the evidence to be just and reasonable, and that while the uniformity sought by the railroads between the interstate and intrastate fares was desirable, uniformity alone was not a sufficient justification for the substantial increases proposed in the coach fares. The proposed increases were denied in each instance.

On March 17, 1943 the railroads operating in Alabama filed with the Interstate Commerce Commission a petition a seeking an investigation under Sections 3, 13 and 15 of the Interstate Commerce Act of intrastate passenger coach fares in Alabama. On June 24, 1943 the Kentucky railroads instituted similar proceedings before the Interstate Commerce Commission for authority to permit increases in Kentucky intrastate passenger coach fares, and at approximately that time the Tennessee railroads also justituted such proceedings with respect to the intrastate coach fares in Tennessee. The Alabama, Kentucky and Tennessee proceedings were docketed respectively as No. 28963, No. 29000, and No. 29037. The railfoads operating in North Carolina filed similar proceedings which were docketed under No. 29036, but the ruling hereinafter referred to with respect to the rates in North Carolina is not involved in the three cases now before this Court. The Interstate Commerce Commission consolidated all of the proceedings before it. After taking evidence and holding Marings the Commis-[fol. 2794] sion on March 25, 1944 issued its report and findings under the style and docket number of Alabama Intrastate Fares No. 28963. Specific findings were made as follows:

- "1. The interstate one-way and round trip coach fares now in effect to, from, and through points in Alabama, Kentucky, North Carolina and Tennessee, and the interstate round-trip fares applicable in sleeping and parlor cars now in effect to, from, and through points in Alabama and Tennessee, are just and reasonable.
- 2. The intrastate one-way and round-trip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, with certain exceptions hereinbefore referred to and not here in issue, and the intrastate round-trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, are lower than the corresponding fares applicable interstate and intrastate generally throughout southern territory, except in the several States mentioned in this finding.
- 3. The conditions affecting the one-way and roundtrip transportation of passengers in coaches within these four States, and the round-trip transportation of passengers in sleeping and parlor cars within Alabama and Tennessee, intrastate on the one hand, and interstate to, from, and through those respective States on the other, are substantially similar.
- 4. Interstate passengers in these States travel in the same train and generally in the same cars with intrastate passengers, but are forced to pay higher fares than the intrastate passengers for like services, to the undue and unreasonable advantage and preference of the intrastate passengers and the undue and unreasonable disadvantage and prejudice of the interstate passengers.
- [fol. 2795] 5. Respondents' revenues under the lower intrastate fares are less by at least \$725,000 per annum in Alabama, \$500,000 in Kentucky, \$525,000 in North Carolina, and \$525,000 in Tennessee than they would be if those fares were increased to the level of the corresponding interstate fares, and traffic moving under these lower intrastate fares is not contributing its fair share of the revenues required to enable respondents to render adequate and efficient transportation service.

6. The maintenance of intrastate one-way and roundtrip coach fares in Alabama, Kentucky, North Carolina, and Tennessee, and of intrastate round-trip fares applicable in sleeping and parlor cars in Alabama and Tennessee, to the extent that such fares are on a lower level than the corresponding interstate fares, causes and will cause undue and unreasonable advantage to and preference of persons in intrastate commerce, undue and unreasonable disadvantage to and prejudice against persons in interstate commerce, and undue, unreasonable, and unjust discrimination against interstate commerce; and this unlawfulness should be removed by increasing the aforesaid intrastate fares in the respective States to the level of the corresponding interstate fares contemporaneously maintained by respondents to, from and through such States; provided, that the aggregate charge made by any of the respondents for the intrastate transportation in any of the States shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondent for interstate transportation to, from. or through such State.

The foregoing findings are without prejudice to the right of the authorities of the affected States, or of any interested party, to apply for modification thereof [fol. 2796] as to any specific intrastate fare on the ground that such fare is not related to interstate fares in such a way as to contravene the provisions of the Interstate Commerce Act."

The Commission made no order at that time but stated-

"In accordance with our practice in such proceedings, we shall leave to respondents and the respective State Commissions the matter of adjusting the intrastate fares to conform to these findings. If this is not accomplished within 30 days from the service of this report, consideration will be given to the entry of an appropriate order."

The State Commissions of Alabama, Tennessee and Kentucky promptly filed applications for reconsideration which were denied by the Interstate Commerce Commission, following which a final corrected order was entered in said

proceedings dated May 8th, 1944. By this order the railroads operating in Alabama, Tennessee and Kentucky were ordered to cease and desist on or before July 1, 1944 "from practicing the undue prejudice and preference and the unjust discrimination found in said report to exist \* \* and thereafter to maintain and apply passenger fares for intrastate transportation in the respective states which shall be on bases no lower than the passenger fares presently maintained and applied by the respective respondents for like accommodations in interstate transportation to, from, and through the respective States; provided, that the resulting aggregate charge made by any of said respondents for intrastate transportation in any of the states shall not exceed the aggregate charge made for like accommodations and for a like distance by the same respondents in interstate transportation to, from, or through such State." The three State Commissions thereafter filed these three actions in the United States District Court for the Western District of Kentucky, stating in each instance that the Louisville & Nashville Railroad Company, one of the carriers which filed the petitions before the Interstate Commerce Commission. is a Kentucky corporation with its residence and principal [fol. 2797] office in said Federal Judicial District. complaints after stating the foregoing facts in detail allege that the corrected order of the Interstate Commerce Commission of May 8, 1944 constitutes an unwarranted and unjustified invasion of the sovereignty of the State in that it exceeds the powers granted to the Federal Congress by the Commerce Clause of Section 8 of Article 1 of the Constitution of the United States; that said order contravenes the Fifth and Tenth Amendments of said Constitution; that there was no evidence before the Commission to support the report, findings and order made by it; that the corrected order of May 8, 1944 is in contravention of the stabilization program of the Federal Government as embodied in the Emergency Price Control Act of 1942 and its Amendment of October 2, 1942; and that unless said order is set aside and annulled innumerable citizens in the respective states will suffer irreparable injury and damage. in the form of excessive passenger fares in intrastate transportation and the respective State commissions will be deprived of their right to regulate intrastate commerce and intrastate passenger fares on railroads operating in said States. Fred M. Vinson, Director of the Office of Economic

Stabilization, through Chester Bowles, Price Administrator of the Office of Price Administration, moved to file, and was permitted to do so, an intervening petition in which he attacks the corrected order of May 8, 1944 as being invalid by reason of its failure properly to interpret and apply its constitutional and statutory authority to protect interstate commerce from undue and unreasonable burdens from intrastate commerce and also by its failure to accommodate the exercise of its powers to the congressional policies embodied in the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942. The Interstate Commerce Commission by its answers alleges that the proceedings, report and orders herein involved indirectly and collaterally related to previous consideration, decisions, and orders of the Commission in respect to the determination of reasonable passenger fares in interstate commerce particularly with reference to such fares in southern passenger association territory, generally located east of the Mississippi River and south of the Ohio and Potomac Rivers, such consideration and decisions covering a period of many years prior to the report involved in this action; that its findings and conclusions in its report of March 25, 1944 [fol. 2798] were fully supported and justified by the evidence submitted; and that the order of May 8, 1944 was not entered either abitrarily or unjustly or without evidence to support it and was within the authority conferred upon the Commission by law. The railroads' motions to intervene were sustained and they filed intervening answers adopting the answer filed on behalf of the Interstate Commerce Commission. The United States of America filed an answer pointing out that the proceedings presented a situation where one Government agency was opposing another Government agency, and in view of the fact that both Government agencies would have an opportunity to present their respective positions by their own counsel it would take a neutral position without prejudice to its later support of one or the other agency in any appeal that might be taken from the decree of the Court.

Jurisdiction of the District Court is conferred by Section 41 (28) Title 28 United States Code. The venue of the present suits in the United States District Court for the Western District of Kentucky is provided by Section 43, Title 28 United States Code. The procedure herein fol-

lowed is provided by Sections 44 through 48, Title 28 United States Code.

Section 15 of the Interstate Commerce Act (Section 15 Title 49 United States Code) empowers the Interstate Commerce Commission to make investigation and hold hearings following any complaint by an authorized party as to the reasonableness of any existing rate. If, following such investigation and hearing, the Commission is of the opinion that the rate is unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, it is authorized and empowered to determine and prescribe what will be the just and reasonable rate to be thereafter observed in such case. Section 13 of the Act (Section 13, Title 49 United States Code) authorizes any person, firm or corporation, or any common carrier or any State Rail av Commission to make complaint to the Commission and have an investigation by the Commission of the matters complained of. also authorizes the Commission to institute such an inquiry at any time on its own motion. Subsection 4 of Section 13 provides that whenever in any such investigation the Commission finds that any rate causes any undue or unreason-[fol. 2799] able advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, or any undue, unreasonable of unjust discrimination against interstate commerce, which is declared to be unlawful by the Act, it shall prescribe the rate thereafter to be charged in such thanner as in its judgment will remove such advantage, preference, prejudice or discrimination, and that such rate shall be observed by the carrier, the law of any State or the decision or order of any State authority to the contrary notwithstanding. The State Commissions recognize the constitutionality of this legislation, which has been many times upheld, but they contend, and rightly so, that the power of the Commission to fix intrastate rates is limited to the two situations of (1) where the evidence shows a preference as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, and (2) where the evidence shows any unrea onable or unjust discrimination against interstate commerce. Any attempt on the part of the Interstate Commerce Commission to regulate intrastate rates where one of these two situations does not exist would be in conflict with the Tenth Amendment to the United States Constitution. Section 15 of the Interstate

Commerce Act imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. Intrastate rates constitute a very important part in maintaining such an adequate national railway system. Gross revenue from intrastate transportation is a little-less than one-third of the gross revenue from interstate transportation. If intrastate rates are fixed at a substantial lower level than interstate rates, the share which intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates will have to be. The effective operation of the Act justly requires that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. The Supreme Court has on numerous occasions recognized this dovetail relation between the purpose of Section 15 of the Act and the authority of the Commission under Section 13(4) of the [fol. 2800] Act to remove undue or unjust discrimination against interstate commerce. Accordingly, when that purpose is interfered with by a disparity of intrastate rates the Commission is authorized to end-the disparity by a proper adjustment of the intrastate rates in question. Wisconsin Railroad Commission v. Chicago, Burlington and Quinev Railroad Co. 257 US 563; New York v. United States 257 US 591; Houston and Texas Rv. v. United States 234 US 342; Florida v. United States 292 US 1; United States v. Louisiana 290 US 70. Accordingly, the Interstate Commerce Commission was fully authorized and empowered to order the adjustment of purely intrastate rates in Alabama, Tennessee and Kentucky if the evidence introduced in the investigation and hearing proved the existence of either of the two situations above referred to.

In these proceedings it is not the province of the Court to review the evidence before the Commission for the purpose of making its own findings of fact. It is a well settled rule of administrative law that the functions of a reviewing court are limited to deciding whether or not there was sufficient evidence to support the findings of fact of the administrative board and whether or not the correct rule of law was applied to the facts so found. Although reasonable persons may differ with the findings of fact by the administrative board upon the evidence before it, yet if it

appears from the record that such findings are supported by substantial evidence the law makes the board's findings on such facts conclusive. The Interstate Commerce Commission, et al. v. The City of Jersey City, et al., U. S. Supreme Court May 29, 1944; Helvering v. National Grocery Company 304 US 282, 294; St. Joseph Stock Yards Company v. United States 298 US 38, 51; Ohio v. United States 292 US 498, 506; Interstate Commerce Commission v. Union Pacific R. Co. 222 US 541, 547. It naturally follows that if the administrative board applied the correct rule of law to the facts so found, its final order in the case must be affirmed. Federal Power Commission v. Natural Gas Pipeline Co. 315 US 575, 586; Helvering v. Rankin 295 US 123, 131; Virginian Ry v. United States 272 US 658, 663.

The validity of the Commission's order of May 8th, 1944 rests primarily upon the basic fact that interstate coach [fol. 2801] fares to, from and through the three states in question are just and reasonable. Unless that fact is first established there is no basis for a finding of discrimination against interstate commerce. Georgia Public Service Commission v. United States 283 US 765; United States v. Louisiana 290 US 70. The Commission so found in its first. finding of fact. We review the record merely to determine if that finding is supported by substantial evidence. Commission had before it evidence showing the history of both interstate and intrastate fares and the statistical data with respect to the principal railroads operating in Alabama, Tennessee nd Kentucky. It had but recently completed a very extensive investigation of freight rates and passenger fares throughout the country in a proceeding before it docketed as Increased Railway Rates, Fares and Charges, 1942, 248 ICC 545, commonly referred to as Ex Parte 148. On January 21, 1942 it entered a preliminary order in that proceeding authorizing a general increase of 10% in passenger fares as proposed by the carriers, finding as it did so that the increase in fares proposed was necessary to enable the carriers to continue to render adequate and efficient railway transportation service during the present emergency, and that the evidence before it showed that the proposed increased fares were reasonable. This finding was renewed and affirmed in the later report of March 2, 1942. On January 4, 1943 the proceeding was reopened for further hearing in response to petitions filed by the Office of Price Administration, various state regulatory bodies and others, who claimed that the financial condition of the railroads had so improved since the original decision, chiefly by subsequent increase in the volume of traffic, as to render unnecessary the continuance of the increase previously authorized. Some of these protestants also claimed that the increases were inflationary in effect. and incompatible with the principles of the economic policy adopted by Congress to prevent inflation. Following the hearing of further evidence in that proceeding in February 1943, which included the latest available report of railroad earnings, as well as forecasts made by a witness of the Office of Price Administration respecting anticipated earnings for the entire year of 1943, the Commission suspended until January 1, 1944 the increases in freight charges previously authorized, and also cancelled the increases author-[fol. 2802] ized by transportation commutation fares, but idify the previous increases in passenger declined to fares. In its report of April 6, 1943 it pointed out that the evidence showed that passenger traffic had failed for many successive years to pay its proper share of railway expenses. and that only with the large volume of traffic and passenger revenue was the 1942 passenger deficit currently eliminated. It found that under then existing conditions the revenues received by the railroads for the remainder of 1943, if their freight rates and charges were so reduced, would meet the objectives of the national transportation policy as defined in the Interstate Commerce Act. On October 11, 1943 the Commission denied petitions filed by the Office of Price Administration and the Alabama and North Carolina Commissions seeking a further investigation of interstate passenger fares in the South. In a 3rd report in Ex Parte 142 dated November 8, 1943, and also in a 4th report in the same proceeding; dated May 8th, 1944, the suspension of freight rate increases was further successively extended to June 30, 1944 and then to December 31, 1944, but the increase in passenger coach fares was allowed to stand. The Commission in making its order of May 8, 1944 had this previous investigation before it and was not required for the purpose of making a finding in the three proceedings then pending before it to retrace or duplicate this work just recently and carefully completed. Administrative procedure necessarily results in the existence of a gap between the time when the record evidence is closed and the time the administrative decision is later promulgated, which

makes it possible and permissible for the Commission, in its discretion, to review or supplement its findings by consideration of evidence subsequently developing instead of rehearing the matter in its entirety. Illinois Commerce Commission v. United States 292 US 474, 480-481; Interstate Commerce Commission, et al. v. The City of Jersey City, et al., United States Supreme Court May 29, 1944. No doubt the Commission, if necessary, could have taken judicial notice of all of its previous rulings just referred to. Butler v. Eaton 141 US 240; Freshman v. Atkins 269 US 121; National Fire Insurance Co. v. Thompson 281 US 331, 336; Kelly v. Johnson 111 Fed. (2) 613, 615. Rut in any event such evidence was admissible in the administrative hearing, which is not bound by the strict and technical rules of evidence prevailing in common law trials. It ap-[fol. 2803] pears well settled that an administrative board has a much broader consideration of facts having a material bearing upon the issue presented than has a jury. Cotton Mills v. Administrator 312 US 126, 154-155; Spiller v. Atchison T. and S. F. R. Co. 253 US 117; Interstate Commerce Commission v. Baird 194 US 25; United States v. Interstate Commerce Commission 290 Fed. 264; Tagg Bros. and Moorhead v. United States 280 US 420; Wigmore on Evidence 3rd Edition, Sections 4a and 4b and 4c (26 at Page 70). These previous investigations and conclusions were supplemented with current statistical data and evidence of increased operating costs largely attributable to war-time It is true that the same war-time conditions have greatly increased the revenues of the carriers, but it has been with resulting unusual wear and tear on equipment. The question presented was a complex one involving new and changing factors of indefinite duration. "The process of rate making is essentially empiric. The stuff of the process is fluid and changing—the resultant of factors that must be valued as well as weighed. Congress has therefore delegated the enforcement of transportation policy to a permanent expert body and has charged it with. the duty of being responsive to the dynamic character of transportation problems." Board of Trade v. United States 314 US 534, 546. In our opinion the evidence was sufficient to sustain this finding of the Commission.

The 2nd and 5th findings of the Commission appear not to be seriously contested by the petitioners, and in any event are fully sustained by the evidence.

The 3rd and 4th findings of the Commission to the effect that the conditions affecting intrastate transportation in the three states on the one hand and interstate transportation to, from and through those respective states on the other hand are substantially similar, and that interstate passengers in these states travel in the same trains and generally in the same cars with the intrastate passengers, but are forced to pay higher fares than the intrastate passengers for the like service, are contested by the petitioners, but a review of the record discloses substantial evidence to [fol. 2804] support these findings. It is conceded by the railroads that the streamlined deluxe trains offer to the traveling public a much higher standard of service than other regular trains or so-called local trains, but in the great majority of cases the streamlined or deluxe trains are available to and actually carry both interstate passengers and intrastate passengers. In a few instances their schedules do not provide for but one regular stop within a state, which prevents the transportation of intrastate passengers within that state, but such a schedule is apparently necessary in order to provide that type of service, and considering both that fact and the relative insignificance of this type of transportation it can be largely disregarded in making the general findings referred to. That part of finding No. 4 which states that the payment by interstate passengers of a higher fare than is paid by the intrastate passengers is to the undue and unreasonable disadvantage and prejudice of the interstate passengers may of may not be sufficiently supported by the evidence to justify its finding, but in view of finding No. 6, hereinbelow referred to, it becomes unnecessary to decide that point.

The Commission found as finding No. 6 that the maintenance of the existing lower intrastate coach fares in Alabama, Tennessee, and Kentucky causes undue, unreasonable and unjust discrimination against interstate commerce, which should be removed by increasing intrastate fares in respective states to the level of the corresponding interstate fare to, from and through such states. The evidence showed that the disparity in rates causes the railroads' revenues to be substantially less than they would be if the intrastate fares were increased to the interstate fare level, and that this disparity is such that passengers destined to points outside the respective states were encouraged to purchase intrastate tickets to points near the state line and

then either buy tickets or pay cash for the remainder of the journey, thus using the lower intrastate fare to defeat the higher interstate fare. The two classes of traffic are inextricably intermingled; the same railways and the same. cars' carry both passengers; the same men operate the train in its intrastate journey and in its interstate journey. [fol. 2805] Under such conditions the effect of maintaining a materially lower rate intrastate than the reasonable interstate rate necessarily results in intrastate traffic failing to pay a fair proportionate share of the cost, maintenance and operation and is discriminatory against interstate traffic. Wisconsin Railway Commission v. C. B. & Q. R. R. Co. 257 US 563; New York v. United States 257 US 591; United States v. Louisiana 290 US 70; Florida v. United States 292 US 1; Illinois Commerce Commission v. United States 292 US 474. The existence of such discrimination against interstate commerce, regardless of the non-existence of any advantage as between persons or localities is sufficient justification for the Commission to end the disparity by ordering it removed.

Petitioners contend that existing rates yield sufficient revenue to constitute a reasonable return to the carriers, that the additional revenue from raising the intrastate rates is not necessary, and that the resulting total revenue will be materially more than the carriers are legally entitled to receive. That may be the result, at least tempo-But the proposed increased rates are not based on the need for additional revenue. The proposed increase is for the purpose of removing an unjust discrimination against interstate commerce which the Commission is empowered to do regardless of resulting increased revenues-or the non-existence of any need for the same. It may be that later, after the increase has had time to show its effect, a downward revision of both interstate and intrastate rates will be in order to meet this objection. On the other hand, present large revenues flow from abnormal traffic conditions, clearly only temporary in their With the return to normal conditions, including the resumption of strong competition from trucks and busses, the combined returns may not be unreasonable. Rate making is not confined to a consideration of results from a single calendar year or from a temporary abnormal condition. The Supreme Court recently held that the

present bulge of war earnings is unreliable for use as a standard. Group of Institutional Investors v. Chicago, Milwaukee, St. P. and P. R. Co. 318 U. S. 523, 543. It is approved administrative practice to consider conditions [fol. 2806] over a reasonable period of years, to strike an average in determining a basis for rate making. St. Joseph Stock Yards Co. v. United States 298 U. S. 38, 46-47; South and North Alabama R. Co. v. Railroad Commission 210 Fed. 465, 480.

The Economic Stabilization Director and the Price Administrator contend that in addition to the Commission's failure properly to interpret and apply its constitutional and statutory authority to protect interstate commerce from undue burdens from intrastate commerce the Commission has failed to accommodate the exercise of its powers to the congressional policies embodied in the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942, and that by reason thereof its order of May 8, 1944 is null and void. This brings into consideration the statutory authority under which these intervenors attack the order in question and their standing in the proceedings. Section 302(c) of the Emergency Price Control Act of 1942 (50 U. S. C. A. Section 942(c)) provides:

"Nothing in this Act shall be construed to authorize the regulation of rates charged by any common carrier or other public utility."

Compare Davies Warehouse Co. v. Bowles 321 US 144. The Emergency Price Control Act was supplemented by the Act of October 2, 1942 which provides:

"That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives 30 days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or Municipal authority having jurisdiction to consider such increase." 50 U. S. C. A. Section 961.

While this language confers upon the executive the right to notice by the utility and requires the utility's consent that the executive be heard by the regulatory body, yet it has been held that in the absence of a clear legislative

mandate to the contrary such intervenors do not possess any greater rights than other intervenors, and that Con-[fol. 2807] gress did not intend to limit in any way the existing power of the Interstate Commerce Commission over rate increases, or to give the Price Administrator any standing to make mandatory demands upon it or to take from it any part of its existing discretion. Vinson v. Washington Gas Company 321 U. S. 489; Interstate Commerce Commission et al. v. The City of Jersey City et al., U.S. Supreme Court decided May 29, 1944. In the Jersey City case above referred to the Court specifically stated that the opinion of the Price Administrator is not mandatory on the Commission; that the weight to be given. to the Price Administrator's contentions called for an exercise of judgment by the Commission and was for the Commission, not for the Court, to determine; that the Interstate Commerce Commission has the responsibility for maintaining an adequate system of wartime transportation. which is a very intricate problem involving many variable factors and calling for informed, expert and unbiased judgment; and that the decision of such a matter by the Commission is clearly not reviewable by the Court because it thinks differently of the weight which should be accorded by some factors in relation to others. In the hearings now under consideration, the Price Administrator was given the required notice and was afforded the opportunity of introducing evidence and of being heard. The report of the Commission refers to his evidence and to his contentions. He has accordingly had the hearing and consideration that the statute provides. He has no standing now in this Court to complain that because his views and contentions were not adopted by the Commission the Commission's order is void and of no effect. His intervention in the three cases presents no additional question to those already discussed.

In our opinion the corrected order of the Interstate Commerce Commission of May 8, 1944, herein complained of, was within the power of the Commission and properly ap[fol. 2808] plied the law to its findings of fact; that these findings of fact are supported by substantial evidence; and that the order is accordingly a valid one which this Court is not authorized to review any further than as hereinabove indicated. Accordingly, the injunction prayed for

in each case is denied and the respective complaints will be dismissed.

Shackelford Miller, Jr., U. S. District Judge, Western District of Kentucky.

[fol. 2809] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DIS-TRICT OF KENTUCKY, LOUISVILLE DIVISION

#### Action No. 706

THE STATE OF ALABAMA and Public Service Commission, Plaintiffs,

#### versus.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COM-

### Action No. 707

THE STATE OF TENNESSEE and THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE, Plaintiffs,

#### versus

United States of America, and Interstate Commerce Commission, Defendants

#### Action No. 708

COMMONWEALTH OF KENTUCKY and RAILROAD COMMISSION OF KENTUCKY, Plaintiffs,

#### versus

UNITED STATES OF AMERICA, Defendant

# Decree-Filed August 3, 1944

These actions having been consolidated and having been heard before the undersigned, constituting a Special District Court of three judges convened pursuant to Title 28. United States Code Section 47, and said Court having considered the evidence taken before the Interstate Commerce

Commission and the report of said Commission in each case, and having considered the arguments and briefs of respective counsel, and the consolidated cause having been submitted for final judgment, and the Court being sufficiently advised and having made its findings of fact and conclusions of law which are filed herein:

Now, Therefore in accordance with such findings of fact and conclusions of law and for the reasons given by the [fol. 2810] Court in its opinion of this date filed herein,

It Is Ordered, Adjudged and Decreed that the injunction prayed for in each action be denied, and that each of said complaints be and is hereby dismissed.

This 3rd day of August, 1944.

Elwood Hamilton, U. S. Circuit Judge for Sixth Circuit; Mac Swinford, U. S. District Judge, Eastern and Western Districts of Kentucky; Shackelford Miller, Jr., U. S. District Judge, Western District of Kentucky.

[fol. 2811] Clerk's Certificate to transcript omitted in printing.

[fol. 2812] [File endorsement omitted]

## IN UNITED STATES DISTRICT COURT

## [Titles omitted]

Notice of Appeal-Filed September 1, 1944

To United States of America and Interstate Commerce Commission, Defendants, and Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator. The Alabama Great Southern Railroad Company, Atlanta, Birmingham and Coast Railroad Company, Atlantic Coast Line Railroad Company, Carolina, Clinchfield Railway of South Carolina, (Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company, Lessees), Central of Georgia Railway Company, The Chesapeake and Ohio Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company; The Nashville, Chattanooga & St. Louis Railway, St. Louis-San Francisco Railway Company (J. M. Kurn and Frank A. Thompson, Trustees), Seaboard Air Line Railway Company (L. R. Powell, Jr., and Henry W. Anderson, Receivers), Southern Railway Company, Tennessee, Alabama & Georgia Railway Company, Tennessee Central Railway Company, The Western Railway of Alabama and The Yazoo and Mississippi Valley Railroad Company, Intervenors

Please take notice that, pursuant to the statutes and rules of court in such cases made and provided, The State of Alabama and Public Service Commission, The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Commonwealth of Kentucky and Railroad Commission of Kentucky, Plaintiffs in the [fol. 2813] above-entitled actions, and each of them, do hereby appeal to the Supreme Court of the United States from the final order and a cree of the District Court of the Untied States of the Western District of Kentucky (Louisville Division) made and entered on the 3rd day of August, 1944, denying the injunction sought to restrain and set aside the corrected order of Interstate Commerce Commission of May 8, 1944, in Dockets Nos. 28963, Alabama Intra-

state Fares; 29000, Kentucky Intrastate Fares; and 29037, Tennessee Intrastate Fares, 258 I.C.C. 133, and dismissing petitions or complaints of said Plaintiffs, wherein the Commission, after hearing, ordered an increase in the intrastate passenger coach fares in Alabama, Tennessee and Kentucky as prescribed by the Regulatory commissions of said states.

William N. McQueen, Acting Attorney General; Forman Smith, Assistant Attorney General, Attorneys for The State of Alabama and Public Service Commission. Leon Jourolmon, Jr., Attorney for The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee. Eldon S. Dummit, Attorney General of the Commonwealth of Kentucky. M. B. Holifield, Assistant Attorney General of the Commonwealth of Kentucky; J. E. Marks, Attorneys for Commonwealth of Kentucky and Railroad Commission of Kentucky.

Dated September 1, 1944.

[fol. 2814] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

(Titles omitted)

Petition for Appeal—Filed September 1, 1944

To the Honorable the Judges Above-named:

The State of Alabama and Public Service\_Commission, The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Commonwealth of Kentucky and Railroad Commission of Kentucky, plaintiffs in the above-styled actions, considering themselves aggrieved by the final decree made and entered in the above-entitled actions on August 3, 1944, said actions being confol. 2815] solidated for the purpose of said hearing and decree, do hereby appeal therefrom to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith and on the basis of the Supreme Court's jurisdiction upon appeal to review said

order and decree as shown in the Jurisdictional Statement also filed herewith, and pray that the plaintiffs in Actions Nos. 706, 707 and 708 be permitted to appeal jointly from the joint decree rendered in said actions and that the Court approve said joint appeal; that a proper order be entered relating to the appeal bond to be given by said plaintiffs; that a citation be issued as provided by law; and that a transcript of the record, proceedings and papers (or, so far as the Court may direct, the original record in lieu of such transcripts) upon which said decree is based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such cases provided.

William N. McQueen, Acting Attorney General; Forman Smith, Assistant Attorney General, Attorneys for The State of Alabama and Public Service Commission. Leon Jourolmon, Jr., Attorney for The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee. Eldon S. Dummit, Attorney General of the Commonwealth of Kenutcky; M. B. Holifield, Assistant Attorney General of the Commonwealth of Kentucky; J. E. Marks, Attorneys for Commonwealth of Kentucky and Railroad Commission of Kentucky.

Dated September 1, 1944.

[fol. 2816] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

Assignment of Errors-Filed September 1, 1944.

The State of Alabama and Public Service Commission, The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Commonwealth of Kentucky and Railroad Commission of Kentucky, plaintiffs in the above-styled actions, file the following Assignment of Errors with and as part of their petition for appeal to the Supreme Court of the United States from the final decree of the District Court, entered August 3, 1944,

in which the Court (1) refused to enjoin, set aside or annul the corrected order of the Interstate Commerce Commission, dated May 8, 1944, in its Dockets Nos. 28963, Alabama Intrastate Fares; 29000, Kentucky Intrastate Fares; and 29037, Tennessee Intrastate Fares; in so far as said order required increases in the intrastate fares of [fol. 2817] Alabama, Kentucky and Tennessee, respectively, and (2) ordered and decreed that the above-entitled actions and each of them be dismissed.

Plaintiffs assert that the District Court in its decree, findings of fact, and conclusions of law erred in the follow-

ing respects:

I. The Court erred in refusing to enjoin, set aside and annul said order of the Interstate Commerce Commission.

II. The Court erred in refusing to enjoin, set aside and annul said order of the Interstate Commerce Commission on the ground that said order was not based on adequate findings by the Commission supported by substantial evidence before the Commission.

III. The Court erred in dismissing the above entitled complaints and each of them, and in denying the relief sought in such complaints.

IV. The Court erred in its Finding of Fact No. 1, in that such finding purports to find that the interstate passenger coach fares in the territory south of the Ohio and Potomac Rivers and east of the Mississippi River, were reduced from 3.6 cents to 2 cents per passenger mile on June 1, 1936, pursuant to findings of the Interstate Commerce Commission in a proceeding then pending before The record before the Court shows that most of the railroads in said southern territory maintained a passenger coach fare of 1.5 cents per passenger mile, and other railroads a fare of 2 cents, during the period from December 1, 1933 to February 9, 1942, inclusive, except that during the 14 months from November 15, 1937 to January 14, 1939, inclusive, the passenger coach fares on all of said railroads were 2 cents per passenger mile. further shows that the Interstate Commerce Commission in the 1936 proceeding found that the passenger coach fare of 1.5 cents per passenger mile then being maintained by most southern railroads was not unreasonable, or otherwise unlawful.

V. The Court erred in Finding of Fact No. 2, in that such finding purports to find that the interstate passenger coach fares of the southern railroads were increased 10 per cent from 2 cents to 2.2 cents per passenger mile effective February 10, 1942, by an order of the Interstate Commerce Commission of January 21, 1942 in a proceeding properly pending before it. The record before the [fol. 2818] Court shows that the 10 per cent increase authorized by said order was limited to the interstate passenger fares then being charged by the railroads and as published in their tariffs, that the interstate passenger coach fares of most southern railroads were only increased from 1.5 to 1.65 per passenger mile under said order, and that said fares of 1.65 cents were maintained until October 1. 1942, when they were increased to 2.2 cents per passenger mile over the protest of the Office of Price Administration and without any hearing by the Interstate Commerce Commission.

VI. The Court erred in its Finding of Fact No. 4, in that such finding purports to find that the Interstate Commerce Commission consolidated its investigations of the Alabama. Kentucky and Tennessee intrastate passenger fares under the style and docket number of Alabama Intrastate Fares The record before the Court shows that the three proceedings, namely, Docket No. 28963, Alabama Intrastate Fares; Docket No. 29000, Kentucky Intrastate Fares; and Docket No. 29037, Tennessee Intrastate Fares; were heard separately upon separate records and at different times and places, that separate briefs therein were filed, that separate proposed reports were issued in the Alabama and Kentucky cases, in which the examiner recommended dismissal of said cases, and that no proposed report was issued in the Tennessee case. Only at oral argument were the cases heard together and a single report and order rendered therein.

VII. The Court erred in its Finding of Fact No. 6, in that such finding purports to find that the findings of the Interstate Commerce Commission in its report of March 25, 1944 in Dockets Nos. 28963, Alabama Intrastate Fares; 29000, Kentucky Intrastate Fares; and 29037, Tennessee Intrastate Fares; are supported by substantial evidence.

VIII. The Court erred in holding as a conclusion of law that said order of the Interstate Commerce Commission of May 8, 1944, is an authorized and valid order, that it correctly applied the proper principles of law to the facts so found by it, and that it is not arbitrary or unreasonable.

IX. The Court erred in holding as a conclusion of law that the Interstate Commerce Commission properly required on the evidence before it, and its findings of fact, that the [fol. 2819] railroads operating in Alabama, Tennessee and Kentucky establish and maintain intrastate coach fares for passengers on bases no lower than the existing interstate fares.

X. The Court erred in holding as a conclusion of law that the injunctions prayed for in the actions named above, and each of them, should be denied and the proceedings dismissed.

XI. The Court erred in finding as a fact (Sheet 10 of mimeographed opinion) that "Gross revenue from intrastate transportation is a little less than one-third of the gross revenue from interstate transportation."

XII. The Court erred in finding as a fact (Sheet 14) that the findings and orders of the Interstate Commerce Commission in Increased Railway Rates, Fares and Charges, 1942, 248 I. C. C. 545, et seq., commonly referred to as Ex Parte 148, "supplemented with current statistical data and evidence of increased operating costs largely attributable to war-time conditions," was sufficient evidence to sustain the Commission's first finding of fact, namely, that the interstate coach fares to, from and through the states of Alabama, Kentucky and Tennessee, are just and reasonable.

XIII. The Court erred in finding as a fact (Sheef 14) that "The 2nd and 5th findings of the Commission appear not to be seriously contested by the petitioners, and in any event are fully sustained by the evidence."

XIV. The Court erred in finding as a fact (Sheet 14) that "a review of the record discloses substantial evidence to support these findings," namely, those portions of the 3rd and 4th findings of the Commission, wherein the Commission found that the conditions affecting the transportation of passengers in coaches within the three states involved, intrastate on the one hand, and interstate to, from and through these states on the other, were substantially similar.

XV. The Court erred in finding as a fact (Sheet 15) that the evidence showed that the disparity between the interstate and intrastate fares "is such that passengers destined to points outside the respective states were encouraged to purchase intrastate tickets to points near the state line and then either buy tickets or pay cash for the remainder of the journey, thus using the lower intrastate fares to defeat the higher interstate fare." Such practices, if they exist, are [fol. 2820] illegal.

XVI. The Court erred in holding as a conclusion of law (Sheets 15 and 16) that "Under such conditions (intermingling of interstate and intrastate passengers on same trains and in same cars) the effect of maintaining a materially lower rate intrastate than the reasonable interstate rate necessarily results in intrastate traffic failing to pay a fair proportionate share of the cost, maintenance and operation and is discriminatory against interstate traffic.

The existence of such discrimination against interstate commerce, regardless of the non-existence of any advantage as between persons or localities is sufficient justification for the Commission to end the disparity by ordering it removed."

XVII. The Court erred in holding as a conclusion of law (Sheet 16) that the Interstate Commerce Commission is empowered to remove unjust discrimination against interstate commerce by increasing intrastate fares "regardless of resulting increased revenues or the non-existence of any need for the same."

XVIII. The Court erred in declining to set aside, annul and enjoin said order of the Interstate Commerce Commission on the ground that the Commission had no statutory power to make the same.

XIX. The Court erred in declining to set aside, annuland enjoin said order of the Interstate Commerce Commission on the ground that said Commission had contrary to the requirements of Section (13) (2) of the Interstate Confinerce Act (Title 49 U. S. C. Sec. 13 (2)), refused the request made by the State of Alabama to investigate the reasonableness of interstate rates under then existing conditions and said Commission had no power to make an order such as is here challenged without making the investigation requested by said State.

XX. The Court erred in declining to set aside, annul and enjoin said order of the Interstate Commerce Commission because for the first time in the history of railroading, so far as we are advised, said order of the Commission permitted and directed an increase of revenue to the carriers when there was shown no revenue necessity therefor and, on the contrary, it appeared from all the testimony that such increase only increased the already excessive profits of the railroads on such operations.

[fol. 2821] XXI. The Court erred in declining to set aside, annul and enjoin said order of the Interstate Commerce Commission on the ground that the voluntary action of the railroads of Alabama, Kentucky and Tennessee in increasing interstate fares on October 1, 1942, to take advantage of wartime conditions, which made such increases possible or practical, at a time when the said railroads had no present need for increased revenues in order to provide adequate and efficient railway transportation service, did not render unlawful the existing and theretofore lawful intrastate fares within said states.

XXII. The Court erred in declining to set aside, annul and enjoin the order of the Interstate Commerce Commission on the ground that the Commission had no power to order increases in the intrastate coach fares of Alabama, Kentucky and Tennessee in order to compensate for passenger service deficits incurred during prior years, which deficits were in fact compensated by a support factor in freight rates.

XXIII. The Court erred in declining to set aside, annul and enjoin said order of the Interstate Commerce Commission on the ground that in its determination of the reasonableness of the interstate rates and fares, the Commission failed to give due consideration "to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service," as required of said Commission by section 15a (2) of the Interstate Commerce Act.

XXIV. The Court erred in declining to set aside, annul and enjoin the order of the Interstate Commerce Commission on the ground that the Commission was not justified in overruling action of the Alabama, Kentucky and Tennessee

railroad and utilities commissions made in conformity with Stabilization Act of 1942 and the President's Executive Order 9328, section 4, 8 F. R. 4681, which rulings of said Commissions were made at the request of the Economic Stabilization Director and the Price Administrator.

XXV. The Court erred in sustaining an erroneous rule of law applied by the Interstate Commerce Commission in that it ordered said increase in intrastate rates in order to bring about uniformity or simplification which would destroy absolutely the power of intrastate regulation.

[fol. 2822] XXVI. The Court erred in approving the action of the Interstate Commerce Commission in applying an incorrect principle of law by grounding its action in part upon the costs of troop train movements to the railroads.

XXVII. The Court erred in approving the action of the Interstate Commerce Commission in grounding its conclusion in part upon an incorrect principle of law in considering the costs of furlough fares to the railroads.

XXVIII. The Court erred in failing to find as a fact that no locality and no group or representative of coach travelers and no coach traveler had complained to the Commission or the Court of any burden or discrimination against them by reason of the difference in intrastate and interstate fares.

XXIX. The Court erred in failing to find as a fact that there was no substantial evidence before the Interstate Commerce Commission to support its specific findings numbered 1, 3, 4, 5 and 6, or any one of them, as set forth in its report of March 25, 1944 in Dockets Nos. 28963, Alabama Intrastate Fares; 29000, Kentucky Intrastate Fares; and 29037, Tennessee Intrastate Fares.

\* XXX. The Court erred in failing to find as a fact that the findings set forth in said report of the Interstate Commerce Commission of March 25, 1944 are inadequate to support the corrected order of the Commission of May 8, 1944, which required increases in the intrastate passenger coach fares of Alabama, Kentucky and Tennessee to become effective July 1, 1944, but later postponed to August 15, 1944.

Wherefore, appellants pray that said final decree entered August 3, 1944, be reversed.

Dated September 1, 1944.

Eldon S. Dummit, Attorney General of the Commonwealth of Kentucky; M. B. Holifield, Assistant Attorney General of the Commonwealth of Kentucky; J. E. Marks, Attorneys for Commonwealth of Kentucky and Railroad Commission of Kentucky.

William N. McQueen, Acting Attorney General; Forman Smith, Assistant Attorney General, Attorneys for The State of Alabama and Public Service Commission; Leon Jourolmon, Jr., Attorney for The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee.

[fol. 2823] , IN UNITED STATES DISTRICT COURT

[Titles omitted]

ORDER ALLOWING APPEAL

In the above-entitled actions, The State of Alabama and Public Service Commission, the State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Commonwealth of Kentucky and Railroad Commission of Kentucky, having made and filed a joint Petition for Appeal to the Supreme Court of the United States from the final decree of this Court in these actions entered on August 3, 1944, and having also made and filed an Assignment of Errors, and a Jurisdictional Statement, and having in all respects conformed to the statutes and rules of Court in such actions made and provided, it is

Ordered and decreed that the joint appeal be, and the same is hereby allowed as prayed for; and it is

Further Ordered that a certified transcript of the record herein-be transmitted in due course to the Supreme Court of the United States (except as the Court may direct that [fols. 2824-2835] part of the original record herein shall be transmitted in lieu of a transcript thereof); and it is Further ordered that the bonds of said plaintiffs on said appeal be fixed at the sum of One Thousand Dollars (\$1,000) for each action, the same to be and act as bonds for costs but not as supersedeas; and that the appeal bonds in the sum of One Thousand Dollars (\$1,000), wherein Alabama Public Service Commission is principal and United States Fidelity & Guaranty Co. is surety in Action No. 706; the Railroad and Public Utilities Commission of the State of Tenness e is principle and National Surety Corporation is surety in Action No. 707; and Railroad Commission of Kentucky is principal and National Surety Corporation is surety in Action No. 708, conditioned for payment of costs upon said appeal and presented for approval be, and are hereby, approved and ordered filed.

Dated September 1, 1944.

Elwood Hamilton, United States District Judge, Sitting by Designation.

[fols, 2836-2837] Citation in usual form filed September 1, 1944, omitted in printing.

[fol. 2838] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

# [Title omitted]

Appellants' Praecipe for Consolidated Transcript of Record on Joint Appeal from Final Decree—Filed September 1, 1944

To the Clerk of the Above-entitled Court:

You are hereby requested to prepare a consolidated transcript of the record in the above entitled actions to be filed in the Supreme Court of the United States, pursuant to an appeal allowed therein, from the final decree of the Court, dated August 3, 1944, and to include in such consolidated transcript of record all of the original complaints, petitions, [fol 2839] answers and other pleadings and also the original of the record of the proceedings before the Interstate Commerce Commission in its Dockets Nos. 28963, Ala-

bama Intrastate Fares; 29000, Kentucky Intrastate Fares; and 29037, Tennessee Intrastate Fares.

William N. McQueen, Acting Attorney General, Forman Smith, Assistant Attorney General, Attorneys for The State of Alabama and Public Service Commission. Leon Jourolmon, Jr., Attorney for The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee. Eldon S. Dummit, Attorney General of the Commonwealth of Kentucky. M. B. Holifield, Assistant Attorney General of the Commonwealth of Kentucky. J. E. Marks, Attorneys for Commonwealth of Kentucky and Railroad Commission of Kentucky.

Dated September 1st, 1944.

[fol. 2840] IN UNITED STATES DISTRICT COURT

[Titles omitted]

ORDER AS TO RECORD

It is Ordered that the original records, instead of a transcript thereof, in the above cases, be transmitted on appeal to the Supreme Court of the United States.

Elwood Hamilton, United States District Judge, Sit-

eting by Designation.

September 1, 1944.

[fol. 2841]

[File endorsements omitted]

IN UNITED STATES DISTRICT COURT

[Titles omitted]

ACKNOWLEDGMENTS OF SERVICE-Filed September 15, 1944

Receipt of service of copy of Appellants' Praecipe in the above actions is hereby acknowledged.

Signature: Charles Fahy, Solicitor General.

Date Received: Sep. 11, 1944.

61 - 574

[fol. 2842] Receipt of service of copy of Appellants' Praecipe in the above actions is hereby acknowledged.

Signature: Robert L. Pierce, Special Ass't to the Att'y Gen.

Date Received: Sept. 11, 1944.

[fol, 2843] Receipt of service of copy of Appellants' Praecipe in the above actions is hereby acknowledged.

Signature: Allen Crenshaw, Counsel, Interstate Commerce Commission.

Date Received: 9/11/44.

[fol. 2844] Receipt of service of copy of Appellants' Praecipe in the above actions is hereby acknowledged.

Signature: — -

Date Received: 9/11/44.:

[fols. 2845-2847] Receipt of service of copy of Appellants' Praccipe in the above actions is hereby acknowledged.

Signature: W. L. Grubbs.

Date Received: Sept. 9, 1944.

[fol. 2848] IN UNITED STATES DISTRICT COURT

[Titles omitted]

Petition for Appeal.—Filed September 29, 1944

To the Honorable the Judges above-named:

The above-named Plaintiffs, the Economic Stabilization Director by the Price Administrator, considering themselves aggrieved by the final decree made and entered in the above-entitled causes on August 3, 1944, do hereby appeal therefrom to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith, and on the basis of the Supreme Court's jurisdiction upon appeal to review said order and decree as shown in the Jurisdictional Statement also filed herewith, and pray that said appeal be allowed; that a citation be issued as provided by law; and that a transcript of the record, proceedings and [fol. 2849] papers (or so far as the Court may direct, the original record in lieu of such transcript) upon which said

decree is based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such cases provided.

For the Economic Stabilization Director by the Price Administrator, Richard H. Field, General Counsel; David F. Cavers, Assistant General Counsel; Bernard M. Fitzgerald, Transporation Counsel, Transportation and Public Utilities Division; M. D. Miller, Chief Counsel, Common Carrier Section, Transportation and Public Utilities Division, Office of Price Administration, 5319 Federal Office Building No. 1, 2nd & D Streets, S. W., Washington 25, D. C.

Dated, September 26, 1944.

[fol. 2850] IN UNITED STATES DISTRICT COURT

#### [Titles omitted]

ASSIGNMENT OF ERRORS—Filed September 29, 1944

The Economic Stabilization Director by the Price Administrator, Intervenor-Plaintiffs in the above-entitled causes, file the following assignment of error with and as part of their Petition for Appeal to the Supreme Court of the United States from the final decree of the District Court for the Western District of Kentucky, entered August 3, 1944, denying injunction and order to restrain and set aside, and annul the corrected order of the Interstate Commerce Commission, dated May 8, 1944, in Docket Nos. 28963, Alabama Intrastate Fares; 29000, Kentucky Intrastate Fares; and 29037, Tennessee Intrastate Fares, 258 I.C.C. 133, so far as said order required the railroads to increase intrastate passenger coach fares in said States, and further ordering and decreeing that the Complaint of Intervenor-Plaintiffs be dismissed.

Intervenor-plaintiffs assert that the District Court erred in the following respects:

[fol. 2851] (1) The Court erred in its sixth finding of fact that the stated findings of the Interstate Commerce Commission in said proceedings are supported by substantial evidence.

- (2) The Court erred in its conclusion of law that said order correctly applies the proper principles of law to the facts found by the Commission and is not arbitrary and unreasonable.
- (3) The Court erred with respect to the conclusion of law that the Commission properly required, on the evidence before it and its findings of facts substantially supported by said evidence, that the railroads operating in Alabama, Tennessee, and Kentucky establish and maintain intrastate coach fares for passengers on bases no lower than the existing interstate fares.
- (4) The District Court erred as a matter of law in concluding that there was substantial evidence of record to sustain, consistently with the Commission's duty to "give full effect to wartime conditions and the stabilization legislation", the Commission's finding that undue, unreasonable and unjust discrimination against interstate commerce, within the meaning of Section 13(4) of the Interstate Commerce Act, had resulted from the order of the above-named plaintiff State commissions, declining to authorize intrastate passenger fare increases under wartime conditions productive of net revenue (including net passenger operating revenues) in excess of those required to meet maintenance and operating costs and to yield a fair return.

Wherefore, Plaintiffs-Appellants, the Economic Stabilization Director by the Price Administrator, pray that said final decree entered August 3, 1944 be reversed.

Respectfully submitted, Chester Bowles, Price Administrator; Richard Field, General Counsel; David F. Cavers, Assistant General Counsel; Bernard [fols. 2852-2876] M. Fitzgerald, Transportation Counsel, Transportation and Public Utilities Division; M. D. Miller, Chief Counsel, Common Carrier Section, Transportation and Public Utilities Division, Office of Price Administration, 5319 Rederal Office Building No. 1, 2nd & D Streets, S. W., Washington, D. C.

Dated, September 26, 1944.

## [fol. 2877] IN UNITED STATES DISTRICT COURT

## [Titles omitted]

## ORDER ALLOWING APPEAL

In the above-entitled cause, the Economic Stabilization Director by the Price Administrator, having made and filed a Petition for Appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered August 3rd, 1944, and having also made and filed an Assignment of Errors, and a Jurisdictional Statement, and having in all respects conformed to the statutes and rules of Court in such case made and provided, it is

Ordered and Decreed that the appeal be, and the same is

hereby, allowed as prayed for; and it is

Further Ordered that a certified transcript of the record herein be transmitted in due course to the Supreme Court of the United States (except as the Court may direct that part of the original record herein shall be transmitted in [fols. 2878-2880] lieu of a transcript thereof).

Shackelford Miller, Jr., United States District Judge.

Dated, September 29th, 1944.

## [fol. 2881] IN UNITED STATES DISTRICT COURT

## [Titles omitted]

APPEAL FROM FINAL DECREE—Filed September 29, 1944

To the Clerk of the Above-entitled Court:

You are hereby requested to prepare a transcript of the record in the above-entitled actions to be filed in the Supreme Court of the United States, pursuant to an appeal allowed therein, from the final decree of the Court, entered August 3, 1944, and to include in such transcript of record the original complaints, petitions, answers, and other pleadings; a copy of the decree, findings of fact, conclusions of law, and opinion of the Court; the evidence submitted by the parties to the Court, including the original of the record

of the proceedings before the Interstate Commerce Commission in its Dockets Nos. 28963, Alabama Intrastate Fares 29000, Kentucky Intrastate Fares and 29037, Tennessee Intrastate Fares: the notice of appeal, petition for appeal, and assignment of errors on behalf of the Economic Stabilization Director by the Price Administrator, the order allowing such appeal, citation on appeal, jurisdictional statement by said appellants with attached decree, findings of fact, conclusions of law, and opinion of the District Court sought to be reviewed, statement by plaintiffs-appellants directing attention to paragraph 3 of Rule 12 of the revised rules of the Supreme Court of the United States, this praccipe and acknowledgements of service therefore, and the order as to transcript of record.

[fols. 2882-2883] For the Economic Stabilization Director by the Price Administrator, Richard H. Field, General Counsel; David F. Cavers, Assistant General Counsel; Bernard M. Fitzgerald, Transportation Counsel, Transportation and Public Utilities Division; M. D. Miller, Chief Counsel, Common Carrier Section, Transportation and Public Utilities Division, Office of Price Administration, 5319 Federal Office Building No. 1, 2nd & D. Streets, S. W., Washington 25, D. C.

Dated, September 26, 1944.

[fol. 2884-2886] IN UNITED STATES DISTRICT COURT

[Titles omitted]

ORDER TO TRANSMIT ORIGINAL RECORD

The Clerk will transmit the original record consisting of Notice of Appeal and all papers in connection therewith filed in this office, to the Clerk of the Supreme Court of the United States, on the appeal of the Economic Stabilization Director, Intervenor-Plaintiff herein.

Shackelford Miller, Jr., Judge.

October 11, 1944.

# [fol. 2887] IN UNITED STATES DISTRICT COURT

## [Titles omitted]

#### ORDER AS TO TRANSCRIPT OF RECORD

In accordance with the provisions of the praccipe for transcript of record of Plaintiffs-Appellants, the Economic Stabilization Director by the Price Administrator, on appeal from the final decree of this Court in the above-entitled proceedings, entered August 3, 1944, it is hereby

Ordered, that the Clerk of this Court transmit as part of a consolidated record on appeal to the Supreme Court of the United States in the above-entitled proceedings, such documents and evidence mentioned by said praccipe as have not already been included in the transcript of record upon the motion of Plaintiffs-Appellants, the State of Alabama and Public Service Commission, the State of Tennessee and Railroad and Public Utilities Commission of the State of Tennessee and Commonwealth of Kentucky and Railroad Commission of Kentucky.

Shackelford Miller, Jr., U. S. District Judge.

This 11th day of Oct., 1944.

[fol. 2888] IN THE SUPREME COURT OF THE UNITED STATES

## No. 574

STATEMENT OF POINTS ON WHICH APPELLANTS, THE STATE OF ALABAMA AND PUBLIC SERVICE COMMISSION, COMMONWEALTH OF KENTUCKY, AND RAILROAD COMMISSION OF KENTUCKY, INTEND TO RELY—Filed October 23, 1944

Appellants, The State of Alabama and Public Service Commission, Commonwealth of Kentucky and Railroad Commission of Kentucky, both in brief and upon oral argument will rely on each and every of the points specifically raised in appellants' assignment of errors heretofore filed herein, which points, without omitting any thereof, may for purposes of convenience and clarity be more concisely stated as follows:

[fol. 2889]

Point I

There was no substantial or any evidence presented orally by witnesses, or by exhibits filed at the hearings

before the Interstate Commerce Commission, or any evidence presented at hearings in other proceedings before the Commission and stipulated into the records in the instant proceedings under the provisions of the Commission's Rules of Practice, to support all or any of the findings of the Commission herein, and the orders of the Commission based upon said unsupported findings are void and unenforceable.

#### Point II

The mere showing of the fact that the intrastate coach fares are lower than the corresponding interstate fares is without probative value, and does not constitute evidence of any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.

## Point III

Statements made by representatives of the rail carriers at the hearings before the Interstate Commerce Commission that the Commission in 1936, in a proceeding known as Passenger Fares and Surcharges, 214 I. C. C. 174, prescribed a maximum interstate coach fare for 2 cents per passenger mile between points in the United States, and in the same proceeding approved as reasonable and lawful an interstate coach fare of 1.5 cents per passenger mile in southern territory, which includes all of Alabama and most of Kentucky; that the Commission in a proceeding known [fol. 2890] as Increased Railway Rates, Fares and Charges, 1942, 243 I. C. C. 545, et seq., commonly known as Ex Parte 148, authorized effective February 10, 1942, a general increase of 10 per cent in passenger fares for the duration of the war and six months thereafter; that the Commission in a subsequent order in Ex Parte 148, dated August 1, 1942, without a hearing thereon and without notice to the public thereof, authorized the rail carriers operating in southern territory to file tariffs, effective October 1, 1942, increasing their interstate fares from 1.65 cents to 2.2 cents per passenger mile, and that the Commission later refused to suspend said increases, even though requests for suspension were presented to it, are without probative value, and do not constitute evidence that the

present interstate fares to, from and through the states

affected are just and reasonable.

None of the evidence presented in Pussenger Fares and Charges, supra, and Ex Parte 148, supra, was stipulated into the records in the instant proceedings, as provided by Rule 82 of the Commission's Rules of Practice. Furthermore, Ex Parte 148 was a revenue proceeding only from which the issue of the reasonableness of particular fares, rates and charges, was specifically excluded.

#### Point IV

Testimony of representatives of the rail carriers at the hearings before the Interstate Commerce Commission that there have been some increases in the cost of operating their passenger services during the war period, without showing the extent of such alleged increased costs and also without showing whether such alleged increased costs have been more than offset by the tremendous increases in pas-[fol. 2891] senger traffic, is without probative value, and does not constitute evidence of the reasonableness of the present interstate coach fares.

## Point V

The testimony of representatives of the rail carriers at the hearings before the Interstate Commerce Commission that intrastate passengers ride in the same trains and sometimes in the same cars as interstate passengers and at lower fares per passenger mile than paid by the interstate passengers, is without probative value, and does not constitute evidence of any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign If such testimony is adjudged to have probative value and to constitute evidence of advantage, preference, or prejudice as between persons or localities, or discrimination against interstate commerce, the Interstate Commerce Commission would inevitably become the sole arbiter of all intrastate fares, rates and charges, because all intrastate traffic is interminated in the same trains and sometimes in the same cars as like interstate traffic.

#### Point VI

Statements made by representatives of the rail carriers at the hearings before the Interstate Commerce Commission that a person who desires to travel from an interior origin in the states affected to an interstate destination may, under favorable circumstances, not always present, purchase a ticket at the intrastate fare to a station at or near the state border, detrain at the latter station and there purchase [fol. 2892] a ticket at the interstate fare to an interstate destination, and thus avoid payment of the full price of his interstate transportation, are without probative value, and do not constitute evidence of any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. The congressional intent by the adoption of the Interstate Commerce Act was to give a remedy against actual and not imaginary and improbable evils, and there was no evidence presented at the hearings that such possible evasions of the law had been practiced.

#### Point VII

Testimony and exhibits presented by representatives of the rail carriers at the hearings before the Interstate Commerce Commission tending to show losses incurred in their over-all passenger operations in prior years, are without probative value, and do not constitute evidence of any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. Furthermore, such testimony and exhibits do not constitute evidence of the reasonableness of the present interstate coach face of 2.2 cents per passenger mile.

## Point VIII

The hearings before the Interstate Commerce Commission herein were not general hearings made upon the Commission's own motion, but hearings necessarily specific because [fol. 2893] ordered upon the petitions of the rail carriers only. No locality, or person engaged in interstate travel, intervened therein, or was otherwise made a party thereto. or offered evidence in its or his own behalf therein, and the only issue before the Commission at said hearings was whether or not the intrastate coach fare of 1.65 cents per passenger mile approved by the state commissions constituted a discrimination against interstate or foreign commerce. By reason of these facts the Commission had no jurisdiction over any locality, or person engaged in interstate travel, and had no authority to hear or consider evidence offered at said hearings by witnesses for the rail carriers on the issue of undue or unreasonable advantage. preference or prejudice in favor of or against any locality or person not before it, and the attempted finding in favor of persons in interstate travel over whom it had no jurisdiction, and whom it could not from the record name, was void, and the order based upon said finding was and is unenforceable.

#### Point 1X

The Interstate Commerce Commission and the District Court erred in their general conclusion of law that an intrastate fare lower than a reasonable interstate fare for substantially the same service is unlawful if an increase in the intrastate fare to the interstate level would produce increased revenues, even though the railroads have no present need for such increased revenues and regardless of the reasonableness of the intrastate fares.

## [fol. 2894] Point X

The Interstate Commerce Commission and the District Court erred in that they did not recognize in their decisions and judgments that the state commissions have the exclusive jurisdiction to determine the lawfulness of the intrastate coach fares and the power to require the rail carriers to maintain said fares, unless the intrastate fares fail to product an income sufficient to pay its fair proportionate part of the cost of maintaining and operating the transportation service and to provide a reasonable return upon the transportation investment, and thus cast a burden upon interstate commerce, and that said intrastate fares do not become unlawful merely because the Interstate Commerce Commission permits said rail carriers to charge higher in-

terstate fares, also within the zone of reasonableness, to, from and through the states affected.

[fol. 2895] [File endorsement omitted.]

[fol. 2896] IN THE SUPREME COURT OF THE UNITED STATES

## Term No. 574

STATEMENT OF POINTS ON WHICH THE STATE OF TENNESSEE AND THE RAILROAD AND PUBLIC UTILITIES COMMISSION OF THE STATE OF TENNESSEE INTEND TO RELY—Filed October 23, 1944

The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Plaintiffs-Appellants in the above styled actions, for a Statement of the Point on which they intend to rely in brief and oral argument respectfully say:

[fol. 2897] The District Court of the United States for the Western District of Kentucky, Louisville Division erroneously refused to enjoin, set aside and annul an order of the Interstate Commerce Commission requiring the railroads operating within the States of Alabama, Tennessee and Kentucky to increase the intrastate coach fares in said States, although said action of the Interstate Commerce Commission contravenes the Tenth Amendment of the Constitution of the United States inasmuch as the finding of said Commission that the intrastate fares imposed by authority of the respective states have caused or will cause. an undue, unreasonable or unjust discrimination against interstate or foreign commerce is not sustained by the evidence of record, there being no evidence of any revenue burden upon interstate commerce nor any finding of the Commission of the amount of additional revenues from intrastate rates required to enable the carriers to adequately and sufficiently meet the country's transportation needs.

They further state that the foregoing point on which they rely is supported by the following assignments of error filed in the District Court of the United States for the Western District of Kentucky, Louisville Division, on September 1, 1944, to-wit: XVII and XX

These parties also rely specifically upon the following assignments of error: I, II, XII, XIII, XIV, XVI, and XXII, all of which relate to the single point stated above.

Respectfully submitted, Leon Jourolmon, Jr., Attorney for State of Tennessee and Railrond and Public Utilities Commission of the State of Tennessee.

[fol. 2898] CERTIFICATE OF SERVICE

I hereby certify that I, this day, served the foregoing Statement of Points upon all parties of record in this proceeding by mailing a copy thereof, properly addressed to the Attorney of each such party.

Dated this 20th day of October, 1944.

Leon Jourolmon, Jr., Attorney of State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee.

[fol. 2899]. [File endorsement omitted.]

[fol. 2900]

#### IN SUPREME COURT OF THE UNITED STATES

No. 574

Designation of the Parts of the Record to Be Printed for Account of Appellanta

Filed Oct. 9, 1944"

I. Action No. 706 (Alabama Complaint)

All of record except the parts designated below:

Part to be Omitted

Exhibit A of Petition (copy of decision of

Interstate Commerce Commission)
Exhibit D of Petition (Copy of order of
Interstate Commerce Commission de
nying reopening)

Exhibit F of Petition (Copy of corrected order of Interstate Commerce Commis-

sion of May 8, 1944) Summons and Returns

Motion of Fred M. Vinson intervening in Action 706

Order of Court granting intervention of Fred M. Vinson

Motion of carriers, et al. to dismiss complaint of Fred M. Vinson

Transcript of arguments before Threejudge Court on application for injunction

All briefs

Exhibits before Interstate Commerce Commission in Docket 28963 as shown below:

No. 1-Map

No. 25—Excerpts from decision

No. 39—Excerpts from 214 L.C.C.

No: 40 (Except both sides of Sheet 1)

No. 41 and those having higher numbers

Reason for Omission

Same as Exhibit B in Petition 707

Same as Exhibit C in Petition 707

Same as Exhibit A in Petition 707

Not necessary Not necessary

Not necessary

Not necessary

Not necessary

. Not necessary

Not necessary Not necessary Not necessary Not necessary

Not necessary

[fol. 2901]

II. Action No. 707 (Tennessee Complaint)

· All of record except the parts designated below:

Part to be Omitted .

Complaint Exhibits A, B, C, D and E of Complaint Transcript of Record and all Exhibits in I.C.C. Docket 29037 Summons and Returns

Motion of Fred M. Vinson intervening as Plaintiff in Action 707.

Order of Court granting intervention of Fred M. Vinson

Motion of carriers to dismiss complaint of Fred M. Vinson

All briefs Certificate of I.C.C. certifying the record in Docket 29037 including various petitions, answers and orders of I.C.

Stenographer's minutes taken in Nash-ville, Tennessee, December 2-3, 1943 Exhibits 1-17 filed in Docket 29037

Report of Commission and decision of Interstate Commerce Commission, March 25, 1944

Order of Interstate Commerce Commisdenying reconsideration, May 8, 1944

Corrected order of I.C.C., May 8, 1944

Certificate of I.C.C. as to papers embodied in Docket 29037 by reference, this being petitions of various parties for investigation of interstate coach fares and action of I.C.C. relative thereto

[fol. 2902]

Petition of the North Carolina Utilities Commission asking for investigation of interstate passenger fares

Petition of Prentice M. Brown and Office of Price Administration, dated July 31, 1943, asking for general investigation of interstate passenger fares in the south Reply of railroads to petition of OPA dated August 9, 1943

Petition of Alabama Public Service Commission asking for investigation of interstate passenger fares

Letter of rail carriers to Secretary of Interstate Commerce Commission dated. September 8, 1943

Letter of Interstate Commerce Commis-sion signed by Secretary Bartel to North Carolina Utilities Commission, Alabama Public Service Commission and Prentice M. Brown, Price Administrator, dated October 13, 1943

Reason for Omission

See note below See note below Same as Exhibit E of Complaint

Not necessary Not necessary

Not necessary

Not necessary

Not necessary Not necessary

Same as Exhibit E of Complaint

Same as Exhibit E of Complaint, see note below Same as Exhibit E of Complaint, see note below

Same as Exhibit C of Complaint

Same as Exhibit A of Complaint, see note below. Not necessary

#### Part to be Omitted

Certificate of Interstate Commerce Commission as to statistical statements prepared by the I.C.C. for the months of October, November and December, 1943

Interstate Commerce Commission statistical statement No. M-100 for October, November, and December, 1943.

Interstate Commerce Commission statement No. M-150 for the months of October, November and December, 1943

Interstate Commerce Commission statistical statement No. M-250 for the month of October, 1943

[fol. 2903]

Transcript of arguments before Three-Judge Court on application for injunction Reason for Omission

Not necessary

Copies of these Exhibits are to be furnished for use in all three records. If they cannot be obtained they need not be printed

Copies of these Exhibits are to be furnished for use in all three records. If they cannot be obtained they need not be printed

Copies of these Exhibits are to be furnished for use in all three records. If they cannot be obtained they need not be printed

Not necessary

Note—Pursuant to agreement reached at conference held in the office of the Clerk of the United States Supreme-Court, September 25, 1944, plaintiffs in Action 707 are to furnish the Clerk with 30 copies of their complaint filed in the lower court, dated June 10, 1944, and said copies are to be accepted as part of the printed record and to be designated as Volume 1.

III. Action No. 708 (Kentucky Complaint)

All of record except the parts designated below:

Part to be Omitted

Exhibit A of Petition (Copy of corrected order of Interstate Commerce Commission of May 8, 1944)

Exhibit C of Petition (Copy of decision of Interstate Commerce Commission)

Exhibit D of Petition (Copy of Interstate Commerce Commission order denying reopening)

Summons and Returns

Order of June 20, 1944 in regard to affidavit of J. E. Marks

Affidavit of J. E. Marks

Motion of Fred M. Vinson intervening in Action 708
Order of court granting intervention of

Order of court granting intervention of Fred M. Vinson, Motion of carriers, et al. to dismiss com-

Motion of carriers, et al. to dismiss complaint of Fred M. Viuson

Transcript of arguments before Three-Judge Court on application for injunction

All briefs

Reason for Omission

Same as Exhibit A in Petition 707

Same as Exhibit B in Petition 707

Same as Exhibit C in Petition 707

Not necessary Not necessary

Not necessary Not necessary

Not necessary

Not necessary

Not necessary

Not necessary

[fol. 2904] Part to be Omitted

Renson for Omission

Exhibits before Interstate Commerce Commission in Docket 29000 as shown below:

No. 1-Map

No. 2-Decision of Ky. R.R. Commission

No. 16—Method used in assigning passenger revenues and expenses

Not necessary Same as Exhibit B in Complaint 708

Not necessary

IV. Appeal Pleadings, Etc.

In addition to the parts of the record designated above there should be printed for the joint account of all three appellants the following described orders and pleadings:

Order convening three judge court.

Notice of Appeal

Petition for Appeal Assignment of Errors

5-Order allowing Appeal Citation on Appeal

Jurisdictional Statement by Plaintiffs

Decree, Findings of Fact and Conclusions of Law, and Opinion of Dis-

trict Court

9-Statement by plaintiffs appellants directing attention to Paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States

10-Appellants' Praecipe
11-Order of Court for transmittal of original record to Supreme Court

12-Acknowledgment of service of appeal papers by attorneys for all parties

fol. 2905| V. Statement of the Points Relied on by Appellants

Pursuant to Rule 13 (9) of the Supreme Court Rules, Appellants are to furnish to the Clerk of the Supreme Court within 15 days after the case is docketed (now scheduled for October 9, 1944) statements of the points on which they intend to rely, and such statements are to be included in the printed record.

[fol. 2906]

(File endorsement omitted)

[fol. 2907] IN THE SUPREME COURT OF THE UNITED STATES

No. 592

APPELLANTS' DESIGNATION OF POINT INTENDED TO BE RELIED Upon—Filed October 24, 1944

Appellants, Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, state the following as the point on which they intend to rely in their appeal to this Court from the final decree dismissing their complaints, entered by the District Court for the Western District of Kentucky on August 3, 1944:

The findings and order of the Interstate Commerce Cominission were not based on substantial evidence, are er-

roneous in law, and are arbitrary and unreasonable. particular, the record before the Commission did not contain substantial evidence to sustain, consistently with the Commission's duty to "give full effect to wartime conditions and the stabilization legislation," the Commission's finding that an undue, unreasonable, and injust discrimination against interstate commerce, within the meaning of Section 13(4) of the Interstate Commerce Act, had resulted from the decisions and orders of the Alabama Public Service Commission, the Kentucky Railroad Commission, and the Tennessee Railroad and Public Utilities Commission declining to authorize intrastate passenger fare increases under wartime conditions productive of net revenues (including net passenger operating revenues) in excess of those required to meet maintenance and operating costs and to vield a fair return.

# [fol. 2908] DESIGNATION OF PARTS OF RECORD TO BE PRINTED

Appellants, Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, designate the following as parts of a consolidated record to be printed in addition to those portions designated by the appellants, the States of Alabama, Kentucky, and Tennessee, et al., in U. S. Supreme Court Docket No. 574, October term, 1944:

Motions of Economic Stabilization Director to intervene in Civil Actions 706, 707, 708, D. C., E. D. Ky.

Orders of Court granting interventions,

Motion of intervening railroads to dismiss complaints of Economic Stabilization Director.

Petition for appeal by Economic Stabilization Director.

Assignment of Errors by Economic Stabilization Director.

Order allowing appeal by Economic Stabilization Director.

Praecipe of Economic Stabilization Director.

Order of Court directing transmittal of original record to Supreme Court on the appeal of the Economic Stabilization Director.

Statement of points intended to be relied upon and designation of parts of record to be printed for the Economic Stabilization Director.

For the Economic Stabilization Director, by the Price Administrator, Richard H. Fields General Counsel; David F. Cavers, Assistant General Counsel; Bernard M. Fitzgerald, Transportation Counsel, Transportation and Public Utilities Division; M. D. Miller, Chief Counsel, Common Carrier Section.

[fol. 2909] The undersigned acknowledge receipt of a copy of the attached designations of point to be relied upon and of parts of record to be printed, for appellants, Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, vs. The United States of America, Interstate Commerce Commission, The Alabama Great-Southern Railroad Co., et al., U. S. Supreme Court Docket No. 592, October Term, 1944.

# Signature of Recipient

Date Received

Allen Crinshaw, for the Interstate Commerce Commission
Charles Fahy, Solicitor General
Charles Clark
(Name illegible.)

10/21/44 10/21/44 Oct. 21, 1944

[fol. 2910] [File endorsement omitted.]

[fol. 2911] Supreme Court of the United States, October Term, 1944

Nos. 574 & 592

ORDER NOTING PROBABLE JURISDICTION-November 13, 1944

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted and the cases are assigned for argument immediately following Nos. 560 and 561.

Endorsed on Cover: File No. 49,027, 49,045, D. C. U. S., Western Kentucky. Term No. 574. The State of Alabama and Public Service Commission. The State of Tennessee and the Railroad and Public Utilities Commission of the State of Tennessee, Commonwealth of Kentucky and Railroad Commission of Kentucky, Appellants, vs. The United

States of America, Interstate Commerce Commission and Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, et al. Term No. 592. Fred M. Vinson, Economic Stabilization Director, by Chester Bowles, Price Administrator, Appellant, vs. The United States of America, Interstate Commerce Commission and The Alabama Great Southern Railroad Company, et al. Filed October 9, 1944. October 13, 1944. Term No. 574 O. T. 1944. 592 Q. T. 1944.

(6425)